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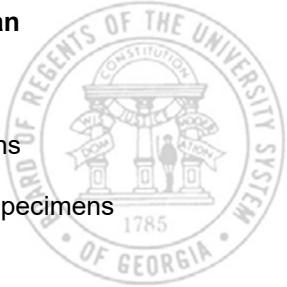
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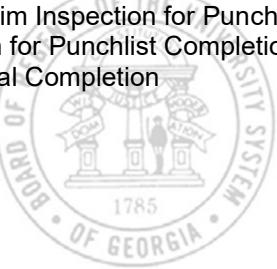
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## **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

### **SECTION 1 – GENERAL**

#### **PART 1        GENERAL PROVISIONS**

##### **1.1.1 General Matters**

1.1.1.1 This Contract and Affiliated Agreements – Requirement for Written Agreements. This Contract and all Affiliated Agreements, including any subsequent modifications, must be in writing, dated, and executed by the parties. Affiliated Agreements, including financial arrangements with respect to this Project, must be promptly and fully disclosed to the Owner upon their execution or modification.

1.1.1.2 Basic Statement of Owner Objectives. The Owner's basic objectives are the construction of the Project within the limits of the funds available to Owner for construction of the Project, and in accordance with the approved Construction Documents.

1.1.1.3 Project Team. To accomplish Owner's objectives, Owner intends to employ a team concept in connection with the construction of the Project. The basic roles and general responsibilities of team members are set forth in general terms below but are more fully set forth in the Design Professional Contract with respect to the Design Professional, in the Program Management Agreement with any Program Manager, and in this Contract with respect to the Contractor.

1.1.1.3.1 Relationship of Parties. The Owner and the Contractor agree to proceed with the Project on the basis of trust, good faith, and fair dealing and to cooperate fully with each other. The Owner and the Contractor shall do all things reasonably necessary to perform this Contract in an economical and timely manner, including without limitation, consideration of design modifications to enhance constructability and alternative materials or equipment, if considered necessary or convenient by the Owner. The Contractor agrees to procure or furnish, as permitted by the laws of Georgia, all Pre-Commencement phase services and construction phase services as set forth herein. The Owner shall endeavor to promote harmony and cooperation among the Owner, Program Manager, Design Professional, the Using Agency, Contractor and other persons or entities employed by the Owner for the Project.

1.1.1.3.2 Design Professional. The Design Professional is retained in accordance with the Design Professional Contract (i) for the design and preparation of Construction Documents that are necessary to implement the Program governing the construction of the Project or Components thereof, and the design and preparation of any necessary documents antecedent to preparation of such Construction Documents, or (ii) for construction contract administration of the Work under Contract Documents, or (iii) for both. The Contractor acknowledges and agrees that the Contract Documents are addressed to skilled tradesmen in the construction profession who shall be required to use their special skills and experience, through submittals and shop drawings, to translate the Design Professional's design intent as expressed in the Contract Documents into a completed structure. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant.

1.1.1.3.2.1 The basis of the Owner's engagement of the Design Professional is the "Design Professional Contract." The Contractor is advised that both the Owner and the Design Professional have on file, at their respective places of business, copies of that executed agreement. The Design Professional is not the agent of the Owner, except to the extent so specified in writing, but is employed as a consultant to the Owner to assist the Owner in determining if the conditions of the contract have been met. All decisions of the Design Professional on matters of aesthetics are final, conclusive, and binding on all parties if consistent with the requirements of the Contract Documents.

1.1.1.3.2.2 The Contractor promptly shall request and review a copy of the Design Professional Contract during the Pre-commencement Phase and shall become familiar with the respective services, authorities, obligations, and responsibilities of the parties therein. Contractor agrees to develop a working relationship with the Design Professional to effectuate the purposes of the Project in accordance with the terms of this Contract and with consideration of the Design Professional's responsibilities under the Design Professional Contract.

1.1.1.3.2.3 The Contractor acknowledges that the respective contracts require the Owner and the Design Professional to proceed with the Project on the basis of trust, good faith, and fair dealing, and they will take all actions reasonably necessary to ensure the Project proceeds to completion within the Owner's time and budgeting constraints. The Contractor also acknowledges that the Design Professional is to perform all tasks and services required of it under the Design Professional Contract. The Contractor further acknowledges that, in order for the Design Professional to perform its obligations, the Design Professional requires certain materials, information, or other submissions pursuant to the Contract Documents from the Contractor. The Contractor agrees to provide the Design Professional with the submittals required by the Contract Documents. The Contractor further agrees to cooperate with the Design Professional to ensure timely completion of all obligations under this Contract to complete the entire Project.

1.1.1.3.2.4 Contractor agrees that the services provided by the Design Professional under the Design Professional Contract are intended to coordinate and complement, but not to diminish, alter or substitute for, any of the services, authority, obligations, or responsibilities of the Contractor under this Contract. Contractor further agrees that the performance of services by the Design Professional in connection with the Project shall in no way relieve Contractor from any of its services, authority, obligations, or responsibilities under this Contract, and shall not alter or diminish those services, authority, obligations, or responsibilities in any way whatsoever.

1.1.1.3.3 Program Manager. Owner may designate a Program Manager to administer the Project and this Contract. In lieu of a Program Manager, Design Professional may be designated to perform the role of Program Manager. The Program Manager may also be designated as the Owner's Representative, and if no Owner's Representative is designated, the Program Manager shall be the Owner's Representative.

1.1.1.3.4 Owner's Representative. Owner shall from time to time in writing designate one person as Owner's Representative under this Contract. Owner may designate the Program Manager, if any, as the Owner's Representative. Owner's Representative so designated in writing shall serve as Owner's Representative under this Contract unless or until Owner gives notice in writing of the appointment of his successor. Owner or Owner's Representative may designate in writing assistants to serve as Owner's Representative with respect to the Project governed by this Contract or in different phases or in specific areas of responsibility with respect to the Project. All requests for consents and approvals required of Owner in connection with the Project, whether by Program Manager, Design Professional, or Contractor, shall be submitted to Owner's Representative, or if the matter is within the written designation of authority of his assistant, to his designated assistant. Design Professional and Contractor may rely upon written consents and approvals signed by the Owner's Representative, or his designated assistant acting within the scope of his written designation, as the consent and approval of Owner.

1.1.1.3.5 Using Agency, Using Agency's Representative. The Project is intended for the benefit of the Using Agency. A copy of all matters submitted to Owner shall also be submitted to Using Agency for Using Agency's information. The Using Agency may designate one or more representatives to participate with Owner in Owner's activities under this Contract. Neither the Using Agency nor any representative of Using Agency shall have any authority to act for or in the name of the Owner. Participation in the Project by Using Agency or its representative(s) shall be solely advisory to the Owner. The Program Manager, Design Professional, Contractor, or any Separate Contractor must not act or rely solely upon any directive, interpretation, decision, act, or omission of Using Agency or the Using Agency's Representative.

1.1.1.3.6 Owner's Construction Inspector. Owner may from time to time in writing designate a person or firm as Owner's Construction Inspector under this Contract. The Owner's Construction Inspector may be hired by Owner or hired under the Program Manager's Contract or the Design Professional's Contract and shall provide inspection services of the Work on behalf of the Owner. The presence of an Owner's Construction Inspector does not relieve the Contractor of any of its responsibilities for quality control and independent testing set forth in the General Requirements. The Owner's Construction Inspector has the authority to report any deviations from the Contract Documents directly to the Contractor's superintendent at the job site for immediate action, and also to report same to the Program Manager or Design Professional, and Owner.

1.1.1.3.7 Representatives. The designated representatives of the Contractor and the Owner shall have full authority to act (other than for the receipt of notices that must be given as specified in Paragraph 1.1.5) in matters relating to this Contract until notice is given that such authority has been revoked. Contractor and the Owner may each rely upon the written certification of the other as to the appointment of a designated representative or the revocation of his authority. The Contractor shall designate, in writing, a representative authorized to act on the Contractor's behalf with respect to the Project. The Contractor's initial authorized representative shall be the Project Superintendent of the Contractor as identified by the Contractor. Contractor shall employ the Project Superintendent and necessary assistants who shall be in attendance at the Site during the progress of the Work. The Contractor's designee shall represent Contractor: All written communications given to the Contractor's designee shall be binding upon Contractor.

1.1.1.3.8 Separate Contractor. Owner may select one or more Separate Contractors to perform work with respect to the Project or Components thereof. The Contractor shall afford the Owner's Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall coordinate the Separate Contractors' schedules with those of the Contractor. The Owner's Separate Contractors shall adhere to the Contractor's work rules, schedule, laydown areas, and safety requirements.

1.1.1.3.9 Commissioning Authority. Owner may select and employ a Commissioning Authority to perform building commissioning activities and monitor testing activities. The Commissioning Authority shall perform and coordinate and accomplish its work as set forth in Articles 1.3.4 and 2.1.9.

## 1.1.2 **Project Team, Cooperation, Partnering**

1.1.2.1 Concept. It is the Owner's expectation that the Program Manager, Design Professional, Owner, Using Agency, Contractor, and any Separate Contractor, shall work as a Project Team to effect the commencement of and completion of construction in accordance with the Project Schedule, and to achieve Final Completion of the Project. Each team member shall communicate with all other team members to assure overall coordination, cooperation, and efficiency. Each team member shall cooperate fully with and coordinate fully with each other team member in order to achieve Project completion in an expeditious and economical manner. The Contractor shall schedule regular meetings of the key principals of the Project Team in an effort to solve problems in a partnering atmosphere to facilitate the ability of each team member to meet its business objectives, so long as its business objectives are consistent with the successful completion of the Project. It is the Owner's intent that all consensus decisions of the Project Team, where differing from the Contract Documents, be reduced to writing in an appropriate Change Order.

1.1.2.2 Conference. Promptly after the execution of this Contract, Contractor shall confer with the Program Manager, Design Professional, Owner, and Using Agency to identify personnel and relevant organizational charts of each team member, and to establish working relationships with each team member.

1.1.2.3 Authority of Contractor. Contractor is, and at all times during the term of this Contract shall be, an independent contractor in the performance of its duties and obligations under this Contract. Contractor shall have no authority to bind or otherwise obligate Owner, orally, in writing or by any acts, unless specifically authorized by Owner in writing. Nothing contained in this Contract shall constitute or be deemed or construed to create a partnership or joint venture, or any agency relationship, between Owner and Contractor.

1.1.2.4 Team Evaluation Process, Covenant not to Sue. If Team Evaluation is elected as part of this Contract, all team members agree to participate in good faith in the State of Georgia's formal Team Evaluation Process [copies of which will be made available to any bidder on request]. By executing this agreement for construction services with the Owner, the Contractor waives any and all legal rights for defamation, libel or slander and covenants not to sue the Board of Regents, the Owner, the Design Professional, the Using Agency, other team members, and their respective representatives and agents for comments, rankings, and results related to the Contractor's performance posted in good faith as a part of, and in accordance with, said Team Evaluation Process. The Design Professional and other team members, in their agreements with the Owner, have executed, or will execute, a similar agreement.

## 1.1.3 **Constitutional Principles Applicable to State Public Works Projects**

1.1.3.1 Title to Project Site. Title to the Site is vested in the Board of Regents of the University System of Georgia as public property of the State of Georgia and is not subject to levy or lien.

1.1.3.2 Title to Improvements and Delivered Materials. Title to all improvements constructed at the Site vests *instanter* in the Board of Regents. Title to all materials vests in the Board of Regents upon their delivery without rejection by the Contractor at the Site, regardless of the status of payment or nonpayment of the costs thereto. Protection of laborers and Suppliers (regarding payment for services and materials) is effected through the provision of payment and performance bonds by the State.

1.1.3.3 Limited Waiver of Sovereign Immunity *Ex Contractu*. Contractor acknowledges and agrees that Owner is an agency or instrumentality of the State of Georgia, and as such is entitled to the protection of sovereign immunity. As set forth in Article I, Section II, Paragraph IX of the 1983 Georgia Constitution, sovereign immunity is waived "as to any action *ex contractu* for the breach of any written contract." Contractor specifically acknowledges the constitutional and contractual requirements that written changes, modifications, and waivers to this Contract must be specifically executed by the Owner as set forth in the Contract Documents. Accordingly, Contractor specifically acknowledges the constitutional prohibitions against claims against Owner based solely upon oral statement, course of conduct, customs of the trade, quasi-contract, quantum meruit, or O.C.G.A § 13-4-4 (mutual departure from contract terms).

1.1.3.4 Limitations upon Authority of Agents. Contractor further acknowledges that Owner is an agency or instrumentality of the State of Georgia, and as such acts through specific public officials. The legal concepts of agency applicable to the Owner are solely as set forth in O.C.G.A. §45-6-5 and as further specified in the Contract Documents. Contractor specifically acknowledges the statutory and contractual requirements that written changes, modifications, and waivers to this contract must be executed only by the identified representatives of Owner as set forth in the Contract Documents. Accordingly, Contractor specifically acknowledges that any claims against Owner based upon the act of any non-authorized employee or official are invalid.

1.1.3.5 U.C.C. Not Generally Applicable. Contractor further acknowledges and agrees that Owner, as set forth in subsection (3) above, has granted only a limited waiver of sovereign immunity, such that the provisions of the Uniform Commercial Code (O.C.G.A §11-1-101 through §11-2-725) governing sales of goods do not apply to this Contract. Contractor specifically acknowledges the contractual requirements that written changes, modifications, and waivers to this contract must be specifically executed by the Owner as set forth in the Contract Documents. Accordingly, Contractor specifically waives and covenants not to make against Owner any claims based upon the Uniform Commercial Code. Contractor understands, however, that Contractor's subcontracts with Suppliers and Subcontractors may in fact include sales of goods and therefore be properly governed by the Uniform Commercial Code; nonetheless Contractor covenants that any such application shall in no way be construed to have any legal effect upon this contract between Owner and Contractor.

**1.1.4 Third Party Beneficiary.** Contractor acknowledges, stipulates, and agrees that the Owner is a public department, agency, or commission of the executive branch of government of the State of Georgia performing an essential public and governmental function by means of the Contract. Contractor acknowledges, stipulates, and agrees that the Using Agency is an express third-party beneficiary of this Contract. There are no individual or personal third-party beneficiaries of this Contract.

#### **1.1.5 Notice**

1.1.5.1 General Requirement. Any notice, election, demand, request, consent, approval, or other communication required or permitted to be given under this Contract shall be in writing signed by an officer or duly authorized representative of the party making same and shall be delivered personally or shall be sent by certified or statutory mail, postage prepaid, return receipt requested, shall be effective as of the date on which it is received or would have been received but for the refusal of the addressee to accept delivery, and shall be addressed as shown in the Contract. The persons and addresses to which notices should be given may be changed by notice given in accordance with this Article.

1.1.5.2 Copies of Notices to Owner. Wherever the Contract Documents provide that a copy of any notice, request, or demand filed with the Design Professional by the Contractor shall be furnished to the Owner, such notice, request, or demand shall not become effective until the Owner has received his copy. No notice in writing or given orally to the Design Professional or to the Contract Compliance Specialist is notice to the Owner unless copy of the aforesaid notice in writing shall have been properly served upon the Owner at the address shown in the Contract.

#### **1.1.6 Liquidated Damages**

1.1.6.1 Time of the Essence. Time being of the essence of this Contract, and a material consideration thereof, it is mutually agreed by the parties hereto in case of the Contractor's failure to complete the construction within the

time specified, the Owner will be damaged thereby. The Contractor shall commence performance of the Work on the Site under this Contract as of the Proceed Order Date. The Contractor shall complete construction, except for Minor Items and Permitted Incomplete Work (see Article 6.1.1), not later than the Material Completion and Occupancy Date, as adjusted by Change Order.

**1.1.6.2 Liquidated Damages.** Because it is difficult to definitely ascertain and prove the amount of said damages, inclusive of, but not limited to, expenses for inspection, superintendence, loss of use, and necessary traveling expenses, the Owner, Contractor, and Using Agency hereby agree that the amount of such damages shall be the daily rate specified in the Contract, beginning upon the contractually required Material Completion and Occupancy Date and ending on the date that the Certificate of Material Completion is issued. The parties agree that the specified Liquidated Damages are not established as a penalty but are calculated and agreed upon in advance as a fair and equitable amount reasonably estimated in advance to cover losses to be incurred by the Owner and Using Agency for such delay or interruption in view of the uncertainty and impossibility of ascertaining actual damages that would be incurred.

**1.1.6.2.1 Contractor Agrees to Pay.** The Contractor agrees to pay the amount, computed by multiplying the Liquidated Damages set forth in the Contract by the number of days between the contractually required Material Completion and Occupancy Date and the date that the Certificate of Material Completion is issued.

**1.1.6.2.2 Deducted as They Accrue.** Liquidated Damages shall be deducted from periodic payments as they accrue and such deduction shall be in addition to the retainage provided for in the Contract. The remaining balance of any Liquidated Damages shall be deducted from the Payment for Material Completion to the Contractor or its Surety. If the unpaid balance of the Contract Sum is less than the total amount to be deducted for Liquidated Damages as herein above provided, the Contractor shall promptly pay to the Owner, upon the Owner's demand, the amount by which such sum exceeds the unpaid balance of the Contract Sum.

**1.1.6.3 Limitation on Owner's Damages.** Except as otherwise set forth in the Contract Documents, damages of the Owner and Using Agency for delay shall be limited to the Liquidated Damages as defined herein. Nothing in this Article shall be construed to limit Owner's right to pursue damages or remedies for claims against the Contractor for reasons other than delay.

## **1.1.7 Documents**

**1.1.7.1 Precedence of Documents and Changes.** In the event of conflict, the Contract takes precedence over the Supplementary Conditions, and the Supplementary Condition take precedence over the General Conditions. No change to the Contract Documents is effective unless notice shall have been issued by the Owner bearing the imprimatur of the Owner as follows:

*"By order of the Board of Regents of the University System of Georgia, Owner."*

The Design Profession has no authority to amend the Contract Documents, orally or in writing, either expressly or by implication.

**1.1.7.2 Copies of Contract Documents to Contractor.** Without charge to the Contract the Design Professional shall furnish to the Contractor up to five sets of completed Contract Documents in hardcopy, one set of reproducible and electronic background floor and reflected ceiling plan drawings and, if requested, one copy in read-only electronic format. The Contractor may obtain such additional sets of Contract Documents, as the Contractor deems necessary and Professional. shall pay the cost of reproduction of such additional sets to the Design Professional.

**1.1.7.3 Marked-Up ("As-Built") Documents.** Prior to Final Completion, the Contractor shall provide one complete set of Marked-Up Documents to the Design Professional. The Marked-Up Documents shall consist of the Contract Documents annotated and changed to reflect the as-built condition of the Project, including all Change Orders, field instructions, answers to RFI's, clarifications, sketches, delegated contractor design drawings and locations of utilities and other hidden elements.

**1.1.7.4 Copies to the Owner.** Upon Owner's request, the Contractor shall furnish the Owner with copies of Project related correspondence, letters of transmittal, etc.

**1.1.8. Defined Terms.** Wherever used in the Contract Documents, the terms defined in this Contract will have the meanings indicated that are applicable to both the singular and plural, and to the masculine and feminine thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents may include references to identified articles and paragraphs, and the titles of other documents or forms.

1.1.8.1 **Meaning of Words and Phrases.** Unless the context or the Contract Documents taken as a whole indicate to the contrary, words used in the Contract Documents that have usual and common meanings shall be given their usual and common meanings; words having technical or trade meanings shall be given their customary meaning in the subject business, trade, or profession. Materials or work described in words that, so applied, have a well-known technical or trade meaning shall be held to refer to such recognized meaning.

1.1.8.2 **Cross-References, Headings, and Citations to the Contract.** Cross-references, headings, and citations to the Contract, if any, are for the convenience of the Contractor and the Owner and are not intended to be plenary or exhaustive nor are they to be considered in interpreting the Contract Documents or any part of the Contract Documents.

1.1.8.3 **Install, Deliver, Furnish, Supply, Provide and Other Such Words.** Install, deliver, furnish, supply, provide, and other such words mean that the Work in question shall be put in place by the Contractor ready for use unless expressly provided to the contrary.

1.1.8.4 **Articles Not Plenary.** This Article and Article 1.1.9 are not entire, plenary, or exhaustive of all terms used in the Contract and General Conditions that require definition. There may be definitions of other terms under articles to which the terms are related.

**1.1.9 Basic Definitions**

1.1.9.1 ***Addenda.*** Written or graphic instruments issued prior to the opening of bids that clarify, correct, or change any of the component parts of the Bidding documents.

1.1.9.2 ***Affiliate.*** With respect to Contractor, any firm, partnership, corporation or other legal entity that is owned by, under common ownership or control with, or having a common principal or shareholder with, the Contractor, whether such relationship is direct or indirect. In addition, unless the consequences of such relationship for the purposes of this Contract are expressly waived in writing by the Owner after full disclosure by the Contractor, the term "Affiliate" also includes any entity currently affiliated with Contractor as a partner or joint venturer with respect to any commercial venture, whether or not such venture includes the Project. See O.C.G.A. §13-10-23.

1.1.9.3 ***Affiliated Agreement.*** Any agreement concerning the Project between the Contractor and an Affiliate, including all modifications and amendments thereto.

1.1.9.4 ***Application for Payment.*** The form acceptable to Owner that is to be used by the Contractor during the course of the Work in requesting payment from the Owner and that is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.1.9.5 ***Asbestos.*** Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.1.9.6 ***Authorization for Using Agency to Enter.*** The Notice from Owner to the Contractor and the Using Agency, upon issuance of a Certificate of Material Completion, that the Using Agency is authorized to take possession of the Project.

1.1.9.7 ***Bid.*** The offer of a Bidder submitted on the prescribed form setting forth the Contract Sum for all activities required by the Bidding Documents.

1.1.9.8 ***Bid Bond.*** A bond, required by law, with a surety in accordance with the Instructions to Bidders, substantially in the form and substance specified in the Bidding Documents, with the Owner as obligee, and intended to secure the execution of the Contract by the Bidder.

1.1.9.9 ***Bidding Documents.*** The Construction Documents, the Invitation to Bid, the Instructions to Bidders, the Bid Form, and all Addenda, upon which the Bidder submits a Bid.

1.1.9.10 *Bulletin*. Written or graphic material issued after the award of the contract that clarifies, corrects, or proposes a change in any of the component parts of the Contract Documents.

1.1.9.11 *Business Day*. A business day is each calendar day other than Saturday, Sunday, and any holiday observed by Owner.

1.1.9.12 *Change Order*. A document issued on or after the Effective Date of the Contract, signed by the Contractor and the Owner and ordinarily certified by the Design Professional, which may authorize a change or changes, including but not limited to a change to the Contract Sum, the Contract Time, or the Contract Documents.

1.1.9.13 *Claim*. A demand or assertion by the Owner or the Contractor seeking an adjustment of the Contract Sum or Contract Time, or both, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the Contractor arising out of or relating to the Contract. The responsibility to substantiate a Claim shall rest with the party making the Claim. A demand for money or services by a third party, including a Trade Contractor, Supplier, or subcontractor to the Contractor, is ipso facto not a Claim against the Owner.

1.1.9.14 *Construction Documents*. The architectural and engineering documents setting forth the design for the Project prepared by the Design Professional. Construction Documents include, but are not limited to, the Specifications, the Drawings, the Supplementary Conditions, the General Conditions, and all Addenda.

1.1.9.15 *Construction Progress Schedule*. A schedule indicating proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation, submittal, and processing of Shop Drawings and Samples, delivery of materials or equipment requiring long-lead time procurement, and proposed date(s) of Material Completion and Occupancy and Final Completion. The schedule will be developed to represent the CSI Specification Divisions. It shall have a minimum number of activities as required to adequately represent to Owner the complete scope of work and define the Project's critical path and associated activities. If the Project is to be phased, then each individual Phase should be identified from start through completion of the overall Project and should be individually scheduled and described, including any Owner's occupancy requirements and showing portions of the Project having occupancy priority. The format of the schedule will have dependencies indicated on a monthly grid identifying milestone dates such as construction start, phase construction, structural top out, dry-in, rough-in completion, metal stud and drywall completion, equipment installation, systems operational, Material Completion and Occupancy Date, final inspection dates, Punchlist, and Final Completion date.

1.1.9.16 *Contract*. The written document that is the evidence of the Contract between the Owner and the Contractor.

1.1.9.17 *Contract Compliance Specialist*. A person, if so designated by the Owner, to record daily events at the Site, including deliveries of equipment and supplies, and the progress of the Work. The Contract Compliance Specialist is not an inspector, and has no authority or power to act as agent for the Owner or to approve or disapprove any action of the Contractor. The Contract Compliance Specialist has no authority to and shall not be requested to sign or initial documents such as delivery receipts, drayage or hauling receipts, or time and materials tickets, or other similar documents evidencing transactions among the Contractor and Subcontractors.

1.1.9.18 *Contract Documents*. The Contract Documents include the executed Contract, the Bid, the Bidding Documents, and all Change Orders.

1.1.9.19 *Contract Sum*. The amount of money payable by the Owner to the Contractor for completion of the Pre-Commencement Services and the Work in accordance with the Contract Documents.

1.1.9.20 *Contract Time*. The period of time established for completion of the Project by the Contract Documents. Contract Time commences upon the date specified in the Proceed Order and ends upon the Material Completion and Occupancy Date, as it may be amended.

1.1.9.21 *Contractor*. The person or entity responsible for the proper completion of the activities described in the Contract Documents and who executes the Contract.

1.1.9.22 *Cost of the Work*. The sum of all allowable costs necessarily incurred and paid by Contractor in the proper performance of the Work.

1.1.9.23 *Day*. Unless otherwise stated, reference to the terms "day," "days," "month," or "months" mean calendar day, calendar days, calendar month, and calendar months, respectively.

1.1.9.24 *Defective Work*. Work that, for any reason, is not in compliance with the Contract Documents. Defective Work is usually identified in a Notice of Non-Compliant Work.

1.1.9.25 *Design Professional Contract*. The Contract between the Owner and the Design Professional for the design of the Project.

1.1.9.26 *Design Professional*. The architect or engineer or architectural or engineering firm selected by Owner (i) for the design and preparation of Contract Documents governing the construction of a Project, or (ii) for construction contract administration under the Contract Documents, or (iii) for both, all such services and the scope thereof to be set forth in the Design Professional Contract. The Design Professional is not an employee of the Owner but is engaged or retained by it for the purpose of performing design and construction administration services for the project. The term "Design Professional" includes architects, engineers, surveyors, designers, and other consultants retained by the Design Professional.

1.1.9.27 *Drawings*. That part of the Contract Documents prepared or approved by the Design Professional that graphically show the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

1.1.9.28 *Effective Date of the Contract*. The date indicated on the Contract or as otherwise specified therein.

1.1.9.29 *Final Certificate, Design Professional's Certificate of Final Completion*. The Certificate issued by the Design Professional stating that all work has been completed in accordance with the terms of the Contract Documents. See Section 6, Project Completion.

1.1.9.30 *Final Completion*. The full and final completion of all Work in accordance with the Contract Documents.

1.1.9.31 *Final Notice of Non-Compliant Work*. The Final Notice of Non-Compliant Work issued as a result of the Inspection for Material Completion, also known as the Final Punch List. Upon the completion or correction of this Non-Compliant Work ("punch list" work) the Design Professional will issue the Final Certificate.

1.1.9.32 *Hazardous Substances*. See Section 1 Part 6.

1.1.9.33 *Material Completion and "Material Completion and Occupancy Date"*. See Section 6 Part 1.

1.1.9.34 *Milestone*. A principal event specified in the Contract Documents including the Material Completion and Occupancy Date and other events relating to an intermediate completion date or time.

1.1.9.35 *Notice*. Written notice. See Article 1.1.5.

1.1.9.36 *Notice of Apparent Successful Bid*. The written notice by the Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the Owner will sign and deliver the Contract. The Construction Preparation Period begins on the Effective Date of the Contract. (See Section 2, Part 1.)

1.1.9.37 *Notice of Non-Compliant Work*. A Notice of Non-Compliant Work shall be in writing, shall be dated, shall be signed by the Design Professional, and shall be addressed to the Contractor with a copy to the Owner, as set forth in Section 3, Part 4 (Correcting the Work) and Section 6, Part 6 (Correcting the Work after Final Payment).

1.1.9.38 *Owner*. The Board of Regents, by and through a State Agency, identified as such in this Contract with whom Contractor has entered into the Contract and for whom the Work is to be completed.

1.1.9.39 *Overall Project Schedule*. The Construction Progress Schedule that is approved by the Owner.

1.1.9.40 *Pre-Commencement Phase Services*. The services required to be provided by the Contractor for the Pre-Commencement Phase of the Project in accordance with the Contract Documents.

1.1.9.41 *Proceed Order*. The Proceed Order is a written notice from the Owner that includes a specified date (i.e. the Proceed Order Date) upon which the Contractor is authorized to commence physical work on the Site. Unless the Proceed Order states otherwise, the Proceed Order Date shall be the date upon which the Proceed Order is actually signed and dated by the Owner's authorized representative. A Proceed Order is a condition precedent to the execution of any Work on the site by the Contractor. The Proceed Order was formerly referred to as the "Notice to Proceed."

1.1.9.42 *Project*. The total and complete undertaking for the public works facility to be constructed under this Contract.

1.1.9.43 *Project Manual*. A bound manual prepared by the Design Professional. It includes the Invitation to Bid, Instructions to Bidders, the Bid Form, the Specifications, the General Conditions and Supplementary General Conditions.

1.1.9.44 *Resident Engineer Inspector*. Synonymous with Contract Compliance Specialist. See Paragraph 1.1.9.16.

1.1.9.45 *Samples*. Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged. The Contractor shall furnish for approval all samples required by the Contract Documents. The Work shall be in accordance with approved samples.

1.1.9.46 *Separate Contractor*. Any person or entity other than Contractor that enters into an agreement with Owner to perform the construction of all or any portion of the construction on a Project.

1.1.9.47 *Site*. Lands or areas indicated in the Contract Documents as being furnished by the Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the Owner that are designated for the use of the Contractor. Also referred to as Project Site, Job Site and Premises.

1.1.9.48 *Specifications*. That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto. The term "Specifications" shall also include all written matter in the Project Manual or on the drawings and any Addenda or Change Orders thereto.

1.1.9.49 *Subcontractor*. The generic term subcontractor as employed herein includes only those having a direct contract with the Contractor.

1.1.9.50 *Submittals*. Shop Drawings, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae, etc., that are specifically prepared, distributed, or assembled by or for Contractor or by Subcontractors, manufacturers, or Suppliers and submitted by Contractor to illustrate some portion of the Work or for use in installing the Work. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant.

1.1.9.51 *Successful Bidder*. The responsible Bidder submitting the lowest responsive Bid.

1.1.9.52 *Supplier*. A manufacturer, fabricator, distributor, supplier, or vendor of goods or equipment in connection with the Work, or any other party having a Contract or Purchase Order with the Contractor or with a Subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or a Subcontractor.

1.1.9.53 *Trade Contractor*. A Subcontractor who furnishes and installs materials according to the plans and specifications of this Project but does not include one who merely furnishes materials. See 1.1.9.49.

1.1.9.54 *Underground Facilities*. All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including without limitation those that convey electricity, gases, steam, liquid petroleum products, telephone or other

communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.1.9.55 *Unit Price Work*. Work to be paid for on the basis of unit prices as defined and described in the Contract Documents. A percentage markup for overhead or profit shall be included in all unit prices.

1.1.9.56 *Using Agency*. The State entity for which the Project is being constructed. The term may include an institution (e.g., University of Georgia) that is a part of the Board of Regents of the University System of Georgia.

1.1.9.57 *Using Agency's Representative*. The Using Agency may designate from time to time a Using Agency's Representative, who shall work with the Design Professional and the Owner's Representative as a liaison with the Using Agency.

1.1.9.58 *Work*. All labor, materials, and services necessary to produce the construction of the Project in accordance with the Contract Documents, including the entire construction or the various separately identifiable parts thereof. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all equipment, fixtures, and supplies into such construction, all as required by the Contract Documents.

## PART 2 CONTRACTOR'S GENERAL RESPONSIBILITIES AND DUTIES

### 1.2.1 Contractor's General Responsibilities

#### 1.2.1.1 Representations of Contractor.

1.2.1.1.1 Independent Contractor. The Contractor represents that it is an independent contractor, competent, knowledgeable, and familiar with the type of work contemplated by this Contract. The Contractor agrees and understands that neither it nor any of its agents or employees may act in the name of the Owner except and unless specifically authorized in writing by the Owner to do so. The Contractor shall furnish construction administration and management services and use the Contractor's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.2.1.1.2 Familiarity with Project. Contractor represents that it has: (a) visited and examined the Site(s), (b) taken into account local conditions and observed conditions that affect the Project, the Work, or the cost thereof, (c) investigated the labor situation related to the Project, (d) examined the superintendence of the Project, the Work, the time of completion, and other relevant matters, and (e) has taken these into consideration in submitting his bid.

1.2.1.2 Responsibility to Coordinate. Contractor acknowledges its responsibility to coordinate the Work with that of Separate Contractors to be selected for the installation of other work within the Project, or in the proximity of the Project. Contractor expressly agrees to schedule and, with the assistance of Owner, coordinate the Work with such Separate Contractors and to permit each phase of the Project to be completed on schedule.

1.2.1.3 Project Delivery. Contractor shall construct the Project in accordance with the Contract Documents, and Contractor shall deliver the Project completed in accordance with the Contract Documents, substantially free from defects, and within the Contract Time.

1.2.1.4 Contractor's Warranty as to Performance. The Contractor warrants that he is familiar with the codes applicable to the Work and that he has the skill, knowledge, competence, organization, and plant to execute the Work promptly and efficiently in compliance with the requirements of the Contract Documents. The Contractor has the obligation to keep a competent superintendent on the Work during its progress, to employ only skilled workers, and to enforce strict discipline and good order among his employees. The Contractor is responsible for seeing that the Work is installed in accordance with the Contract Documents. Failure or omission on the part of the Owner, representatives of the Owner, agents of the Owner, the Contract Compliance Specialist, engineers employed by the Design Professional, representatives of the Design Professional, or the Design Professional either to discover or to bring to the attention of the Contractor any deviation from, omission from, or noncompliance with the Contract Documents shall not be used by the Contractor or its surety as a defense for failure on his part to install the Work in accordance with the Contract Documents or for any other neglect to fulfill requirements of the Contract; neither shall the presence of any one, or all, or any of the foregoing at the Site or the fact that any one, or all, or any of the foregoing may have examined the Work or any part of the Work be used

as a defense by the Contractor against a claim for failure on his part to install the Work in accordance with the Contact Documents or for any neglect to fulfill requirements of the Contract. No requirement of this Contract may be altered or waived except by Change Order.

#### **1.2.2 Contractor's General Duties**

**1.2.2.1 Construction Staging and Construction Services.** The Contractor shall provide and pay for all labor, materials, equipment, transportation, construction, resources, work, and services necessary or incidental to completing the Work for each phase of the Project in a proper and timely manner in accordance with the Contract Documents and applicable laws.

**1.2.2.2 Supervision and Direction.** Contractor shall supervise and direct the Work using diligent skill and attention. Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures. (See Article 3.1.1 et seq.)

**1.2.2.3 Enforce Discipline.** Contractor shall at all times enforce strict discipline and good order among its employees, Subcontractors, and others performing the Work, and shall not employ or permit the employment of unfit persons or persons not skilled in the task assigned to them.

**1.2.2.4 Security Clearances.** Where work is required within a specially secured controlled access environment, work shall be performed by personnel who have passed a security screening.

**1.2.2.5 Maintain Records.** Contractor shall keep Owner informed of the progress of the Work. Contractor shall maintain records of the cost for the Work pursuant to and in compliance with GASB 34 accounting requirements and such other methods as Owner may require, including complete backup documentation for all pay applications.

**1.2.2.6 Answer Questions.** Contractor, with reasonable promptness and in accordance with time limits set by Owner, shall answer Owner's questions and provide Owner with requested Project information.

**1.2.2.7 Acts and Omissions.** Employees of or Subcontractors to the Contractor shall perform the Work required by this Contract. The Contractor is responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons.

**1.2.2.8 Contractor.** Contractor shall, in coordination with the Design Professional, accomplish the construction of the Project, including all required submittals, and such Change Orders as may be issued.

**1.2.2.9 Meetings with the Owner.** Contractor shall schedule and conduct meetings with the Owner, Design Professional, Separate Contractors, and appropriate Subcontractors, not less than biweekly, for the purpose of discussing the status and progress of the Work. Such meetings shall be held as often as Owner determines.

**1.2.2.10 Schedule and Coordination Meetings.** Contractor shall schedule and conduct meetings as necessary with Subcontractors, Suppliers, and other appropriate Project Team Members to coordinate and schedule the Work.

**1.2.3 Audit.** At the request of the Owner, the Contractor shall allow the Owner the opportunity to select an auditor to examine and inspect the Project and the Contractor's books, records, and any and all accounts and similar data related to the Project. The Owner shall bear the cost of such audit. The auditor may sign a confidentiality agreement before conducting any such audit. Notwithstanding such agreement, Contractor understands and agrees that all project records are subject to the Georgia Open Records Act.

**1.2.4 Employment of Georgia Citizens and Use of Georgia Products and Georgia Forest Products.** Given that the Work provided for in this Contract is to be performed in Georgia, it is the wish of the Owner that materials and equipment manufactured or produced in Georgia shall be used in the Work and that Georgia citizens shall be employed in the Work at wages consistent with those being paid in the general area in which the Work is to be performed. This desire on the part of the Owner is not intended to restrict or limit competitive bidding nor to increase the cost of the Work; nor shall the fulfillment of this desire be asserted by the Contractor as an excuse for any noncompliance or omission to fulfill any obligation under the Contract. O.C.G.A. §§50-5-60 to 63 are further incorporated into the General Conditions of the Contract as expressed below:

- (a) No contract for the construction of, addition to, or repair of any facility, the cost of which is borne by the State, or any department, agency, commission, authority, or political subdivision thereof shall be let, unless said contract contains a stipulation therein providing that the Contractor, Construction Manager or Subcontractor shall use exclusively Georgia forest products in construction thereof, when forest products are to be used in such construction, addition or repair, and if Georgia forest products are available.
- (b) These provisions shall not apply when in conflict with Federal law, rules, and regulations concerning interstate commerce or construction.

## PART 3 OWNER'S GENERAL RESPONSIBILITIES AND RIGHTS

### 1.3.1 Owner's Representative

1.3.1.1 Written Designation. The Owner shall designate, in writing, a representative authorized to act on the Owner's behalf with respect to the Project. The Owner hereby designates the party identified in the Contract as its initial authorized representative and reserves the right to designate additional or replacement representatives by written notice to the Contractor.

1.3.1.2 Accessibility. The Owner's Representative shall be readily accessible (either on site or by computer, phone, fax or otherwise), shall be well acquainted with the Project, and shall have authority promptly to render decisions and to furnish information required of, or to be provided by, the Owner hereunder.

1.3.1.3 Independent Review and Inspection. The Owner may undertake independent inspection of the installation of the Work. Such independent inspector shall operate on behalf of the Owner and shall act to protect the best interests of the Owner.

### 1.3.2 Design Professional

1.3.2.1 Design Professional to Design Work. The Design Professional Contract requires the Design Professional to design and to prepare the Contract Documents, a copy of which shall be furnished to the Contractor upon request. The Design Professional Contract requires the Design Professional to designate a readily accessible representative (either on Site or by computer, phone or fax or otherwise) who shall have authority promptly to render decisions and to furnish information required of the Design Professional.

1.3.2.2 Copies of Contract Documents to Contractor. The Design Professional Contract requires that the Contractor be furnished, free of charge, up to ten sets of completed Contract Documents in hard copy, one full set of reproducible drawings and electronic background floor and reflected ceiling plan drawings and, if requested, one complete copy in read-only electronic format. The Contractor may obtain such additional sets of Contract Documents as the Contractor deems necessary and shall pay the cost of reproduction of such additional sets to the Design Professional.

1.3.2.3 Contract Administration. The Design Professional shall provide periodic review of the Work to assess compliance with the Contract Documents. The Design Professional shall not review any Work in respect to safety. The Design Professional is not the agent of the Owner but is engaged as a consultant to the Owner to assist the Owner in determining if the conditions of the contract have been met. He is the agent of the Owner only when in special instances he is authorized in writing by the Owner so to act, and in such instances he shall, upon request, show the Contractor written authority. He has authority to stop the Work whenever such stoppage may be necessary to enforce the proper execution of the Contract.

1.3.2.4 Impartial Decisions. The Design Professional is the interpreter of the conditions of the Construction Contract and the judge of its performance, in the first instance. The Design Professional shall side neither with the Owner nor with the Contractor but shall use its powers to enforce performance by both.

1.3.2.5 Design Professional Decisions. Design Professional's decisions must be in writing and signed by the Design Professional of Record.

1.3.2.5.1 Promptness. The Design Professional shall make decisions within fourteen calendar days after proper presentation of evidence on (1) any issue, claim, or dispute of the Owner or Contractor, or (2) a demand of the Owner or Contractor for a decision on any matter relating to the execution or progress of the Work.

**1.3.2.5.2 Additional Time.** If because of events beyond the Design Professional's reasonable control, it is not able to meet the specified time period, then it should be entitled to ask the Owner for additional time, which request shall not be unreasonably denied.

**1.3.2.5.3 Protests of Design Professional's Decisions.** All decisions of the Design Professional on any claim, dispute, or demand shall be final and binding on the Contractor in the absence of written notice of protest from the Contractor received by the Owner within fourteen calendar days of the date of the decision of the Design Professional is received by the contractor. See Section 5 Part 2.

**1.3.2.6 Aesthetics.** All decisions of the Design Professional on matters of aesthetics are final, conclusive, and binding on all parties if consistent with the requirements of the Contract Documents.

**1.3.2.7 Succession.** In case of the termination of the employment of the Design Professional, the Owner shall appoint a capable and reputable Design Professional against whom the Contractor makes no reasonable objection and whose status under the Contract shall be that of the former Design Professional.

**1.3.3 Permits, Licenses, and Inspections.** The Owner shall cooperate with the Contractor in obtaining building and other permits, licenses, and inspections. See also Subparagraph 2.1.2.2.3 and Article 2.1.5.

**1.3.4 Testing.** The Owner shall provide and pay for initial and subsequent independent construction testing as required by the Contract Documents. Laboratories for testing services shall be selected by, engaged by, and responsible to the Design Professional. In the case of tests (a) prescribed in the Contract Documents or any part thereof, or (b) requested by the Design Professional, the Contractor must give notice to the selected testing agency stating the date and the hour when he will be ready for the test to be made. In the event the test fails or the Contractor is not ready for the test, the expense of the services of the testing laboratory shall be deducted from the Contract Sum, upon notice to the Contractor by the Owner accompanied by a copy of the invoice for the testing services for the test that failed or for which the Contractor was not ready. The notice and readiness provisions of this article do not apply to verification of design mix on concrete.

**1.3.5 No Partial Occupancy.** There shall be no partial occupancy by the Using Agency of the Project prior to the achievement of Material Completion. This provision may be modified in the Supplementary General Conditions only for phased construction projects with stand-alone components or may be modified by Change Order.

**1.3.6 Disqualification of Potential "Pre-Qualified" Subcontractors.** The Owner may disqualify for just cause any pre-qualified potential subcontractors identified in the Bidding Documents. Owner shall pay any difference in the cost of the Work resulting from such disqualification.

**1.3.7 Owner's Right to Perform Work.** The Owner reserves the right to perform construction or operations related to the Project with Separate Contractors on the Site. If the Contractor claims that delay or additional cost is because of such action by the Owner, the Contractor shall assert such claims as provided in Section 5, Part 2 of the General Conditions.

## PART 4 PROTECTION OF PERSONS AND PROPERTY

**1.4.1 Reasonable Precautions.** The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees performing the Work and other persons, including without limitation the General Public, who may be affected thereby; (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of the Contractor or the Contractor's Subcontractors; or (c) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, replacement or other rearrangement in the course of construction.

**1.4.2 Duty to Protect Property.** The Contractor shall continuously maintain adequate protection of the Work from damage and shall protect all other property on the Site from damage, injury, or loss regardless of who may be the owner of said property. He shall make good any such damage, injury, or loss.

**1.4.3 Safety Precautions.** The Contractor shall comply with the rules and regulations of OSHA and the Department of Labor (O.C.G.A. Section §34-2-6), and, where not inconsistent with the foregoing, the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., for safety and prevention of accidents, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work arising out of and in the course of employment on work under the Contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any

damage that may result from their improper construction, maintenance, or operations. He shall erect and properly maintain at all times, as required by the conditions and progress of the Work, proper safeguards for the protection of workers and the public and shall post danger warnings against any hazards created by the construction operations. The Contractor shall designate a responsible member of his organization, normally the superintendent, whose duty shall be the prevention of accidents.

**1.4.4 Emergencies.** In an emergency affecting the safety of persons or property or the Work or of adjoining property, the Contractor shall take reasonable precautions to prevent imminent damage, injury, or loss.

**1.4.5 Fire Protection.** Contractor shall take adequate and reasonable precautions to protect the Work against damage by fire and smoke. For example, without limitation, Contractor shall do the following:

- (a) Provide fire extinguishers or fire hoses in readily accessible locations;
- (b) Periodically inspect fire extinguishers, remove discharged extinguishers immediately, and replace with new or recharged extinguishers;
- (c) Keep fire extinguishers or fire hoses within five (5) feet of any welding or open flame operations;
- (d) Remove oil-soaked and paint-soaked materials, including paper and rags, from the Site daily, and more frequently as necessary, to eliminate danger of fire.
- (e) Prohibit workers from smoking during operations involving combustible adhesives, solvents, mastics, or other fire hazard materials.

**1.4.6 Remedy Damages.** The Contractor shall promptly remedy damages and loss to property at the Site caused by the Contractor, by any Subcontractor, by anyone directly or indirectly employed by the Contractor or any such Subcontractor, or by anyone for whose acts the Contractor or any such Subcontractor may be liable. Should the Contractor cause damage to any Separate Contractor's work, the Contractor agrees, upon due notice, to settle with the Separate Contractor.

**1.4.7 Written Programs.** Contractor shall have written environmental, quality control, crisis/emergency management, health and safety programs in place with a designated (qualified) coordinator as the point of contact during the project. Such plans shall be on the Site and the superintendent and the project management team shall be familiar with and utilize such programs.

## PART 5 BONDS, INDEMNITY, AND INSURANCE

### 1.5.1 Bonds

1.5.1.1 Performance Bond and Payment Bond. The Contractor shall furnish both a performance bond and a payment bond in the exact form set forth in Section 7, (Forms) of these General Conditions.

1.5.1.2 Required Qualifications for Surety. The Contract provides that the surety and insurance companies must be acceptable to the Owner. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570) are acceptable to the Owner. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger.

1.5.1.3 Penal Amount of Bonds, State Law. The Contractor acknowledges and agrees that, pursuant to O.C.G.A. §§13-10-2, 13-10-20, 13-10-40 and 13-10-60, the performance bond and the payment bond must be in a penal amount equal to at least 100% of the Contract Sum. Accordingly, the Contractor warrants and agrees that, for any Change Order increasing the Contract Sum by five percent or more or when the total cost of the work has increased by five percent or more, it shall obtain a written amendment to the payment bond and the performance bond increasing the penal amounts of both bonds to 100% of the Contract Sum, effective as of the date of the Change Order. The premium increase, if any, may be properly included in the cost of the Change Order. The Design Professional shall approve no payment for the work provided by the Change Order until the Contractor has provided the written amendment to the Owner.

### 1.5.2 Liability and Indemnification

1.5.2.1 General Liability. The Contractor shall be responsible to the Owner from the time of the signing of the agreement or the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the Work by the Contractor, or any of its Subcontractors, its agents, employees or others working at the direction of the Contractor or on its behalf, regardless of who may be the owner of the property.

1.5.2.2 Indemnification Agreement. Contractor hereby agrees to indemnify and hold harmless the Owner, the State of Georgia and its departments, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Contract or any act or omission on the part of the Contractor, its agents, employees or others working at the direction of Contractor or on its behalf., or due to any breach of this Contract by the Contractor, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation. This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Contractor. If and to the extent such damage or loss (including costs and expenses) as covered by this indemnification is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS") the Contractor agrees to reimburse the Funds for such monies paid out by the Funds.

1.5.2.2.1 This indemnification does not extend beyond the scope of this Contract and the work undertaken thereunder. Nor does this indemnification extend to claims for loses or injuries or damages incurred directly by the Indemnitees due to breach, negligence or default by the Indemnitor under the terms and conditions of this Contract.

1.5.2.2.2 This indemnification does not extend to claims for loses or injuries or damages incurred by the Indemnitees due to any negligent act, error, or omission of a design professional in the performance of professional services that fails to meet the applicable professional standard of care, skill and ability as employed by others in their profession.

1.5.2.3. DOAS. Risk Management will endeavor to notify affected insurers of claims made against the State that fall within this indemnity. In the event of litigation, the Attorney General will endeavor to keep the Contractor and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement.

### 1.5.3 Insurance Requirements

1.5.3.1 Insurance Certificates. The Contractor shall, in accordance with 2.1.2.2, procure the insurance coverages identified below at the Contractor's expense (e.g. within the bid price and Contract Sum) and shall furnish the Owner an insurance certificate listing the Owner as the certificate holder and as an additional insured. Evidence of insurance coverages shall be provided on the form shown in Section 7 or on a form acceptable to the Owner. The insurance certificate must provide the following:

- (a) Name and address of authorized agent
- (b) Name and address of insured
- (c) Name of insurance company(ies)
- (d) Description of policies
- (e) Policy Number(s)
- (f) Policy Period(s)
- (g) Limits of liability
- (h) Name and address of Owner as certificate holder
- (i) Project Name and Number
- (j) Signature of authorized agent
- (k) Telephone number of authorized agent
- (l) Mandatory thirty-day notice of cancellation or non-renewal (except ten days for non- payment).

1.5.3.2 Insurer Qualifications, Insurance Requirements. Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:

1.5.3.2.1 The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire until thirty days after the Owner has received written notice thereof, as evidenced by return receipt of certified mail or statutory mail, or until such time as other insurance coverage providing

protection equal to protection called for in this Contract shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to the Project as shall have been designated by Project Number and Name in said notice.

1.5.3.2.2 The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds").

1.5.3.2.3 Each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnities remains in full force and effect and is not waived by issuance of any policy of insurance. In the event of litigation, any settlement on behalf of the indemnities must be expressly approved by the Attorney General. The Contractor and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnities, in which case there will be mutual cooperation between the Attorney General and such counsel. See O.C.G.A. § 45-15-12.

1.5.3.2.4 All deductibles shall be paid for by the Contractor.

1.5.3.2.5 Self-insured retention, except for qualified self-insurers or group self-insurers, in any policy shall not exceed \$100,000.00.

1.5.3.3 Required Insurance Coverages. The Contractor also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the Contractor has purchased the following types of insurance coverages, consistent with the policies and requirements of O.C.G.A. §50-21-37. The minimum required coverages and liability limits are as follows:

1.5.3.3.1 Workers' Compensation Insurance. The Contractor agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the Contractor qualifies to pay its own workers' compensation claims. The Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the Contractor in the following language:

*This is to certify that all subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the Contractor's workers' compensation insurance.*

1.5.3.3.2 Employers' Liability Insurance. The Contractor shall also maintain Employer's Liability Insurance Coverage with limits of at least:

(i)	Bodily Injury by Accident	\$1,000,000 each accident;
(ii)	Bodily Injury by Disease	\$1,000,000 each employee; and
(iii)	Bodily Injury/Disease Aggregate	\$1,000,000 each accident.

The Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the Contractor in the following language:

*This is to certify that all subcontractors performing work on this Project are covered by their own Employers Liability Insurance Coverage or are covered by the Contractor's Employers Liability Insurance Coverage.*

1.5.3.3.3 Commercial General Liability Insurance. The Contractor shall provide Commercial General Liability Insurance (2001 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The CGL policy must include separate aggregate limits per Project and shall provide at a minimum the following limits:

<b>Coverage</b>	<b>Limit</b>
1. Premises and Operations	\$ 1,000,000.00 per Occurrence

2.	Products and Completed Operations	\$ 2,000,000.00 per Occurrence
3.	Personal Injury	\$ 1,000,000.00 per Occurrence
4.	Contractual	\$ 1,000,000.00 per Occurrence
5.	General Aggregate	\$ 2,000,000.00 per Project

Additional Requirements for Commercial General Liability Insurance are shown below at Paragraph 1.5.3.3.6.

**1.5.3.3.4 Commercial Business Automobile Liability Insurance.** The Contractor shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each accident. Additional Requirements for Commercial Business Automobile Liability Insurance are shown below at Paragraph 1.5.3.3.6.

**1.5.3.3.5 Commercial Umbrella Liability Insurance.** The Contractor shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form with the Umbrella limits required as follows:

**For Contract Amounts Less than \$5,000,000.00:**  
\$ 2,000,000 per Occurrence  
\$ 4,000,000 Aggregate

**For Contract Amounts Equal to or Greater than \$5,000,000:**  
\$2,000,000 per Occurrence  
\$10,000,000 Aggregate

Additional Requirements for Commercial Umbrella Liability Insurance are shown below at Paragraph 1.5.3.3.6.

**1.5.3.3.6 Additional Requirements for Commercial Policies in Paragraphs 1.5.3.3.3 through 1.5.3.3.5**  
(a) The policy shall name as additional Insureds the officers, members, and employees of the Owner and the Using Agency.  
(b) The policy must be on an "occurrence" basis.

**1.5.3.3.7 Builders Risk Insurance.** Contractor shall provide a Builder's Risk Policy to be made payable to the Owner and Contractor, as their interests may appear. The policy amount should be equal to 100% of the Contract Sum, written on a Builder's Risk "All Risk", or its equivalent. The policy shall be endorsed as follows:

The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy:

- (i) Furniture and equipment may be delivered to the insured premises and installed in place ready for use; and
- (ii) Partial or complete occupancy by Owner; and
- (iii) Performance of work in connection with construction operations insured by the Owner, by agents or lessees or other Contractors of the Owner or Using Agency.
- (iv) Equipment, materials, and/or work stored on site, off site, or in transit.

In the event that the Contract is for renovation, addition or modification of an existing structure and Builders Risk Insurance is not available, the Owner will accept an Installation Floater Insurance Policy with the above endorsements in lieu of the Builders' Risk Insurance Policy. Such floater must insure loss to materials and equipment prior to acceptance by Owner and must be on an ALL RISK BASIS with the policy written on a specific job site.

**1.5.3.3.8 Disposition of Insurance Documents.** One original certificate of insurance with all endorsements attached must be deposited with Owner for each insurance policy required.

**1.5.3.4 Waiver of Subrogation.** Contractor hereby waives all rights of subrogation against Owner and all Indemnitees and additional insureds required under this Contract to the extent a loss is covered by any insurance maintained by any party hereto, and Contractor shall require similar waivers from its Subcontractors.

All insurance policies required to be maintained by Contractor shall contain a waiver of subrogation by the insurer in favor of the Owner and all Indemnitees and additional insureds required under this Contract.

**1.5.3.5 Termination of Obligation to Insure.** Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the Design Professional shall have executed the Certificate of Material Completion.

**1.5.3.6 Failure of Insurers.** The Contractor is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.

## **PART 6 HAZARDOUS CONDITIONS AND MATERIALS**

### **1.6.1 Hazardous Materials**

#### **1.6.1.1 Definition.**

1.6.1.1.1 The term "Hazardous Materials" shall mean any material or substance within the meaning and definition for "Hazardous Substance" and/or "Hazardous Waste" as those terms are employed and set forth in the Georgia Hazardous Site Response Act and the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 USC § 6901 et seq., and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 USC § 6901 et seq., and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof and petroleum releases; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling, including, but not limited to, Asbestos or polychlorinated biphenyl (PCB); and, (e) any infectious or medical waste or environmental contamination as defined by any applicable federal or state laws or regulations.

1.6.1.1.2 The term "Hazardous" Materials does not include those materials that are expressly and specifically required to be installed under the Contract Documents.

1.6.1.1.3 The term "Hazardous" Materials does not include products or materials that are commonly used in construction or industrial practice so long as they are used in accordance with the manufacturer's instructions or Material Safety Data Sheets issued for the product or materials. (See Article 1.6.3 below.)

**1.6.1.2 Obligation to Notify Owner of Existing Hazardous Materials.** The Contractor shall immediately notify the Owner and the Design Professional, both orally and in writing, of the presence and location of any physical evidence of, or information regarding the presence of Hazardous Materials at the Site of which it becomes aware. If the Contractor encounters Hazardous Materials on the Site the Contractor shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such Hazardous Materials; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the Hazardous Materials; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such Hazardous Materials until such materials have been properly remediated and until directed in writing to do so by the Owner; and, (v) take any other steps necessary to protect life and health and the surrounding environment. The Contractor shall be entitled to adjustment of the Contract Time and the Contract Sum pursuant to Section 5, Part 2 of these General Conditions in order to compensate for the impact of any required demolition, re-work, shutdown, delay, protection of work, disruption, and start-up resulting from the encountering of such Hazardous Materials on the Site for which the Contractor is not responsible.

**1.6.1.3 Prohibition Against Selecting and Installing Products Containing Hazardous Materials.** The Contractor shall not select, install or otherwise incorporate any products or materials containing Hazardous Materials within the boundaries of the Site. Should the Contractor or any Subcontractors have knowledge that, or believe that, an item, component, material, substance, or accessory within a product or assembly selected by the Contractor or any Subcontractor may contain Hazardous Materials it is the Contractor's responsibility to secure a written certification from the manufacturer of any suspected material which identifies the specific Hazardous Material(s) contained, together with the Material Safety Data Sheets (MSDS) for such materials which shall be submitted to the Owner and Design Professional.

**1.6.1.4 Fill, Backfill and Landscaping.** No soil found on Site, or transported to the Site from remote locations, which contains debris or waste or Hazardous Materials shall be used for fill, backfill or landscaping topsoil.

**1.6.2 Responsibility and Warranty of Subcontractors, Trade Contractors and Suppliers.** Products that are specified by reference standards or in descriptive manner without a manufacturer's name, model number or trade name, to be selected by the Contractor, shall not contain Hazardous Materials in any form, except as and to the extent permitted in 1.6.1, above, and 1.6.3, below. The Contractor shall require that each of its Subcontractors and Suppliers warrant to the Owner and Design Professional that all materials, products and assemblies, other than those which specifically and expressly required by the Contract Documents, incorporated, or submitted for incorporation into this Project, are free of Hazardous Materials. This warranty shall also include all materials, components, and accessories not specifically enumerated or detailed in the Contract Documents but which are required by performance specifications or recommended by manufacturers for complete installation of materials, products and assemblies.

**1.6.3 Hazardous Materials and Substances Used on the Job Site.** Products containing Hazardous Materials may be employed in the performance of work by the Contractor and its Subcontractors, as allowed by subparagraph 1.6.1.1.2 and 1.6.1.1.3 above, as a means and methods application or as part of its performance of the Work, such as chemicals used on the Site, but only provided that: (i) such products are used in accordance with the manufacturer's instructions and Material Safety Data Sheets; (ii) such products are rendered harmless upon completion of the affected Work; (iii) reasonable precautions can be and are taken to prevent foreseeable bodily injury or death to persons involved in the Work or in its proximity, including the ultimate users of the completed Work; (iv) the Contractor shall make available to the Owner and the Design Professional copies of Material Safety Data Sheets (MSDS) for any such products used on the Site, and (v), the Contractor shall immediately notify Owner, Design Professional and appropriate regulatory agencies if there is a spill or release or misuse of any such product used on the Site that exceeds State or Federal reportable limits.

**1.6.4 Hazardous Conditions.** The Contractor and Owner acknowledge that previously unknown hazardous conditions may be uncovered at any job site, and in particular where existing structures are being demolished and/or remodeled to accommodate new construction or to reutilize existing facilities. Should a hazardous condition not involving Hazardous Materials as set forth above be encountered on the Site, and should reasonable safety precautions be deemed by the Contractor in good faith to be inadequate to prevent foreseeable personal injury to persons encountering the hazardous condition, the Contractor shall, upon recognizing the hazardous condition, stop work in the affected area and immediately report the hazardous condition to the Design Professional and Owner in writing. The Owner shall undertake, or shall contract (by Change Order) with the Contractor or contract with a Separate Contractor, to resolve the condition. So long as the hazardous condition did not result from activities or substances brought on the Site by the Contractor, the Contractor is entitled to adjustments in the Contract Time and the Contract Sum as set forth in Paragraph 1.6.1.2 above.

## PART 7 MISCELLANEOUS PROVISIONS

### 1.7.1 Legal Compliance

**1.7.1.1 General.** This Contract shall be governed by the law of Georgia. The Contractor shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the Work and shall ensure the compliance of its Subcontractors.

**1.7.1.2 Specific Laws.** Without limiting the generality of the foregoing Paragraph, the following laws are specifically referenced:

- 1.7.1.2.1 The Drug-Free Workplace Act, O.C.G.A. § 50-24-1, et seq.
- 1.7.1.2.2 Preference for Georgia Supplies, materials, equipment, and agricultural products, O.C.G.A. §§50-5-60 through 61.
- 1.7.1.2.3 Preference for Georgia forest products, O.C.G.A. § 50-5-63.
- 1.7.1.2.4 Preference for local sellers of Georgia products, O.C.G.A. § 50-5-62.
- 1.7.1.2.5 Standards and Requirements for Construction, Alterations, etc., O.C.G.A. § 8-2-1 et seq.
- 1.7.1.2.6 Control of Soil Erosion and Sedimentation, O.C.G.A. § 12-7-1, et seq.
- 1.7.1.2.7 Regulation of Fire and other Hazards, O.C.G.A. § 25-2-1 et seq.
- 1.7.1.2.8 Regulation of Blasting Operations, O.C.G.A. § 25-2-1 et seq. and 25-9-1 et seq.
- 1.7.1.2.9 Providing safe workplace, O.C.G.A. §§ 34-2-10 and 34-7-20
- 1.7.1.2.10 Georgia Facility Protection Act, O.C.G.A. § 25-9-1 et seq. (See Article E-12(f))
- 1.7.1.2.11 High Voltage Safety Act, O.C.G.A. § 46-3-30 et seq.
- 1.7.1.2.12 Access and Use by Physically Handicapped Persons, O.C.G.A. § 30-3-1 et seq.
- 1.7.1.2.13 Small and Minority Business Enterprises, O.C.G.A. §§ 50-5-120 et seq. and 50-5-130 et seq.

- 1.7.1.2.14 Trading with the State or State Officials, O.C.G.A. §§ 45-10-20 to 45-10-71.
- 1.7.1.2.15 Title VII of the Civil Rights Act, 42 U.S.C. § 2000a through 2000h-6
- 1.7.1.2.16 Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.; 42 U.S.C. § 6101 et seq.
- 1.7.1.2.17 Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.
- 1.7.1.2.18 Federal Occupational Safety and Health Act, 29 U. S. C. § 651 et seq.
- 1.7.1.2.19 Federal Emergency Planning and Community Right-to-Know Act, 42 U. S. C. § 11001 et seq.
- 1.7.1.2.20 Georgia Open Records Act, O.C.G.A. §50-18-70 et seq.
- 1.7.1.2.21 Georgia Blasting Standards Act, O.C.G.A. § 25-8-1 et seq. and Blasting, Excavating Nearby Underground Gas Pipes and Utilities, 25-9-1 et. seq.
- 1.7.1.2.22 Scaffolding and Staging Statute, O.C.G.A. §34-1-1 et seq.
- 1.7.1.2.23 Department of Labor Rules and Regulations, O.C.G.A. § 34-2-6 et seq.
- 1.7.1.2.24 Hazardous Chemical Protection and Right to Know Act, O.C.G.A. § 45-22-2 et seq.,
- 1.7.1.2.25 Retainage on Public Works Contracts, O.C.G.A. §13-10-80 et seq.
- 1.7.1.2.26 Compliance with "federal work authorization programs" and federal Immigration Reform and Control Act of 1986 by Georgia Public Employers, contractors and subcontractors, O.C.G.A. §13-10-90 et seq.
- 1.7.1.2.27 Boycott of Israel Prohibited, O.C.G.A. § 50-5-85.

1.7.1.3 Building Codes. The following Building Codes, in the latest editions approved by the Georgia Department of Community Affairs, shall be used. (See O.C.G.A. §8-2-20.) The Design Professional will designate any additional codes or special modifications in the Supplementary General Conditions. As of the year 2000, these codes are published jointly by the Southern Building Code Congress International, the International Code Council, the Building Officials and Code Administrators, International, and the International Conference of Building Officials, and are commonly referred to as the International Building Codes.

- 1.7.1.3.1 Georgia State Minimum Standard Building Code (International Building Code, 2000 Edition) with Georgia Amendments.
- 1.7.1.3.2 Georgia State Minimum Standard Mechanical Code (International Mechanical Code, 2000 Edition), with Georgia Amendments.
- 1.7.1.3.3 Georgia State Minimum Standard Gas Code (International Fuel Gas Code, 2000 Edition), with Georgia Amendments.
- 1.7.1.3.4 Georgia State Minimum Standard Plumbing Code (International Plumbing Code, 2000 Edition), with Georgia Amendments.
- 1.7.1.3.5 Georgia State Minimum Standard Electric Code (National Electrical Code, 2002 Edition), with Georgia Amendments.
- 1.7.1.3.6 Georgia State Minimum Standard Energy Code (International Energy Conservation 2000 Edition), with Georgia Amendments.
- 1.7.1.3.7 Georgia State Minimum Standard Fire Prevention Code (International Fire Code, 2003 Edition), with Georgia Amendments.

1.7.1.4 Fire, Life Safety, and Accessibility Codes. The following codes, in the versions approved by the Georgia State Fire Marshal/Fire Safety Commissioner and Department of Human Resources, shall be used. The Design Professional will designate any additional codes or special modifications in the Supplementary General Conditions.

- 1.7.1.4.1 Georgia State Life Safety Code (NFPA 101)
- 1.7.1.4.2 State Accessibility Codes (See O.C.G.A. §30-3-3)
- 1.7.1.4.3 Rules and Regulations of the Georgia Safety Fire Commissioner (See O.C.G.A. §§25-2-4,12.)
- 1.7.1.4.4 Swimming Pool Permits and Regulations (See O.C.G.A. §31-45-3, Rules and Regulations Chapter 290-5-57)

1.7.1.5 Latest Edition. The latest edition approved by the implementing agency of the regulations, rules, and codes listed in Paragraphs 1.7.1.3 and 1.7.1.4 above, with all amendments as of the date of the opening of bids, shall govern the installation of all Work and is adopted and incorporated into the Contract Documents and made a part thereof by reference. Provided, however that the drawings and specifications shall be adhered to in all cases where they call for quality of materials, quality of workmanship, or quality of construction which is equal to or in excess of the quality required by the above stated codes and Provided also: That there may be no variances from the drawings and specifications except to the extent that the said variances shall be necessary in order to comply

with the above stated codes. It shall be the responsibility of the Contractor to familiarize himself with the requirements of the above stated codes. If there are any express requirements in the drawings or specifications that are at variance to the above stated codes, all changes in the Work necessary to eliminate or add to the said requirements and make the Work conform to the above stated codes shall be adjusted as provided in the Contract for changes in the Work.

**1.7.1.6 Compliance with Executive Orders Concerning Ethics.** The Contractor warrants that he and his firm have complied in all respects with the Governor's Executive Orders concerning ethics matters, including, but not limited to, Executive Order dated January 13, 2003 (establishing Code of Ethics for Executive Branch Officers and Employees, including provisions governing former officers and employees); Executive Order dated October 1, 2003 (governing vendors to state agencies and disclosure and registration of lobbyists); and O.C.G.A. Sections 21-5-70(5), 21-5-71 and 21-5-73, all as amended effective January 9, 2006 (requiring registration and disclosure filings by state agency vendor lobbyists). In this regard, the Contractor certifies that any lobbyist employed or retained by the Contractor or his firm has both registered and made the required disclosures required by the Executive Orders, as amended.

**1.7.1.7 Compliance with Federal and State Work Authorization and Immigration Laws.** The Contractor and all subcontractors, suppliers and consultants must comply with all federal and state work authorization and immigration laws, and must certify compliance using the form set forth in Section 7 ("Georgia Security and Immigration Compliance Act Affidavits"). The required certificates must be filed with the Owner and copied maintained by the Contractor as of the beginning date of this contract and each subcontract, supplier contract, or consultant contract, and upon final payment to the subcontractor or consultant. State officials, including officials of the Georgia Department of Audits and Accounts, officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the Contractor, subcontractors and consultants without notice during normal working hours until Final Completion, and as otherwise specified by law and by Rules and Regulations of the Georgia Department of Audits and Accounts.

**1.7.1.8 Compliance with the Board of Regents of the University System of Georgia's (the "Board") Policy Regarding Background Checks.** Pursuant to Board policy number 7.7.5.2 or any successor Board policy regarding background checks, the CM/GC must determine whether background checks are required by law or policy to be completed on the CM/GC's employees and/or the CM/GC subcontractors' employees providing on-site construction services. Any required background checks shall be conducted by the CM/GC, and the CM/GC must take appropriate action on any required background checks. Generally, the Board will not require additional background checks. However, in certain circumstances on a specific project basis, the Board's chief administrative officer or his/her designee may require additional background checks or that certain individuals be disqualified from working on-site for that particular project. The GM/GC shall defend, indemnify, and hold harmless the Board for any failure of the CM/GC to obtain and take action on background checks as required. The CM/GC shall also defend, indemnify, and hold harmless the Board from the actions of the CM/GC's employees and subcontractors' employees.

**1.7.2 Surveys, Permits, and Regulations.** The Owner shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be obtained and paid for by the Contractor. Permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by the Owner unless otherwise specified. The Contractor and its Subcontractors must pay any municipal or county occupational licenses, taxes, or fees, if any. The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work. If the Contractor observes that the drawings or specifications are at variance with any such laws, ordinances, rules or regulations, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules or regulations without such notice to the Owner, he shall bear all costs arising therefrom. Nothing in this paragraph shall be construed to impose design responsibility on the Contractor except as noted in the Contract Documents.

**1.7.3 Open Records Act.** Owner and Design Professional and Contractor acknowledge and agree that all records of the project and the Work, including records of Subcontractors, are subject to the Georgia Open Records Act, O.C.G.A. §50-18-70 et seq., with particular attention being called to O.C.G.A. §50-18-70(a) regarding the records of private persons, firms, corporations, or other private entity engaged in performance of services or functions on behalf of a state agency, public agency or public office.

**1.7.4 Use of Site.** The Contractor has a revocable license to come on, use, and perform Work upon the Premises, shall confine thereto his plant, his apparatus, the staging and storage of materials, the operations of his forces and the Work to

limits indicated by law, ordinances, permits, or the Contract Documents, and shall not unreasonably encumber the Premises with his materials. The Contractor shall not load or permit any part of the Work to be loaded with weight that will endanger its safety. The Contractor shall enforce Contract requirements regarding signs, advertisements, fires, and smoking and shall remove from the Premises and properly dispose all trash and debris.

**1.7.5 Office for Contract Compliance Specialist (CCS).** The Contractor shall provide at his expense a temporary office, services, utilities, equipment, and supplies at the Site for the use of the CCS. The office shall be a minimum of 100 square feet in size; weather-tight; and shall be provided with heat, ventilation, cooling, electric lights, adequate windows, and securable access. The following services shall be provided: at least four dual-plug 110 v. electrical outlets, two private telephone connections and local telephone service. The following equipment for the CCS's exclusive use shall be provided: a desk with drawers, two chairs, a four-drawer metal file cabinet, a plan table and rack, a telephone with messaging capability, and connection, cables/electrical surge protection for the electronic equipment and for the CCS's computer. The following items, which may be used in common with the Contractor's facilities, shall be provided: wet (flush) toilet, potable water and soap for hand washing, potable water suitable for drinking, access to fax machine and copier, and use of a room with table and chairs to accommodate meetings of a minimum of eight (8) people. The use of a temporary portable wet toilet with a holding tank is acceptable only when a sanitary sewer is not available on the Site. Toilet tissue and paper hand towels shall be provided at all times. At the completion of the project, all of the equipment provided will be returned to the Contractor. The Contractor is not responsible for providing the following items for the CCS: computer equipment, internet access, long distance, stationery supplies, and personal safety equipment.

**1.7.6 Utilities.** Pending the extension and connection of permanent water, permanent gas, permanent sewer taps, and permanent electric power, the Contractor shall obtain temporary water, temporary gas, temporary electric power, and provide sewage disposal at his own expense. In the absence of provisions to the contrary, the Contractor shall pay for all utilities services until Material Completion has been achieved.

**1.7.7 Royalties and Patents.** The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof. The Owner shall defend and be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified.

**1.7.8 Separate Contracts.** The Owner reserves the right at any time and from time to time upon notice to Contractor to perform, or cause to be performed by other Contractors, other work at the Site in connection with the development of the Project that is not contemplated hereby or that is contemplated hereby if the Contractor and the Owner shall be unable to agree upon a Change Order incorporating such work as Work of the Contractor under this Contract. In either case, the Owner shall assure that such personnel or Contractors do not cause any conflict with the Work of Contractor. Contractor shall afford the Owner and other Contractors reasonable opportunity for the introduction, protection, and storage of material and equipment at the Site and the execution of work, and shall properly connect, if required by Contract Documents, and coordinate its work with theirs. If any work by the Owner or its other Contractors increases Contractor's costs or extends the time of performance, Contractor shall be entitled upon timely claim to a Change Order for payment by Owner of any reasonable costs actually incurred by Contractor as a result thereof and to an extension of time for performance for such reasonable time as the Design Professional shall determine. Contractor has no responsibility hereunder to certify the suitability or correctness of any work performed by Owner's own personnel or other Contractors under direct contract with the Owner. This Article also applies to installation of loose equipment and fixtures by the Owner, Using Agency, or a Separate Contractor.

**1.7.9 Women, and Disadvantaged Business Participation**

1.7.9.1 Good Faith Efforts. Contractor shall, to the extent consistent with quality, price, risk and other lawful and relevant considerations, use its good faith efforts to achieve participation by minority, women, and disadvantaged business enterprise participation in Work and services contracted to Contractor under this Contract.

1.7.9.2 Policy of the State of Georgia. It is the policy of the State of Georgia that minority business enterprises shall have the maximum opportunity to participate in the State purchasing process. Therefore, the State of Georgia encourages all minority business enterprises to compete for, win, and receive Contracts for goods, services, and construction. In addition, the State encourages all companies to sub-contract portions of any State Contract to minority business enterprises. It is the wish of the Owner that minority businesses be given the opportunity to propose on the various parts of the Work. This desire on the part of the Owner is not intended to restrict or limit competitive selection or to increase the cost of the Work. The Owner supports a healthy free market system that seeks to include responsible businesses and provides ample opportunity for business growth and development.

**1.7.9.3 Minority Vendor Designee.** The minority vendor designee of the Owner shall be specified in the Supplementary General Conditions or the Instructions to Bidders.

**1.7.10 Assignment.** The Contractor shall not assign the Contract or sublet it as a whole nor shall the Contractor assign any moneys due or to become due to him hereunder. Contractors may subcontract portions of the Work, normally performed by Subcontractors.

**1.7.11 Interpretation of Contract Documents.** The Contract Documents shall be construed neither against nor in favor of either party but shall be construed in a neutral manner.

**1.7.12 Counterparts.** This Contract may be executed in multiple counterparts. All counterparts shall constitute one and the same instrument. One (1) counterpart of this Contract shall be delivered to the Owner and one (1) counterpart to the Contractor.

**1.7.13 Forms and Specimens.** The forms and specimens in Section 7 are incorporated by reference herein and shall be executed in substantial conformance as required or convenient in describing obligations under the Contract Documents.

**1.7.14 Entire Agreement.** The Contract Documents referenced herein constitute the entire Contract between the Owner and the Contractor with respect to the Project and supersedes all prior negotiations, representations, and agreements. Except as set forth herein, there are no other promises, understandings, agreements, representations or warranties, oral or written, expressed or implied between the parties. This Contract may not be changed, modified, or terminated, in whole or in part, nor any provision waived except by Change Order.

## SECTION 2 – PRE-COMMENCEMENT PHASE

### PART 1 PRE-COMMENCEMENT PHASE SERVICES

**2.1.1 Pre-commencement Coordination.** As early as practicable and reasonably in advance of the commencement of Work on the Project, the Contractor shall schedule and conduct an initial construction coordination meeting for the purpose of determining and developing the appropriate and necessary processes and procedures for proper planning and coordination for the installation of all the Work. The meeting shall include all of the Subcontractors, Trade Contractors, , and Suppliers materially involved in such installation of the Work. The Contractor shall assure that each necessary Subcontractor involved in performance of the Work shall be present and represented by a knowledgeable person with authority to reach agreement on the coordination procedures and processes involving its portion of the Work. The Owner shall be represented at this initial meeting by the Owner's Representative and shall require that authorized and knowledgeable representatives of each of the separate disciplines in the design team, comprising the Design Professional and all Consultants contributing to the design preparation, shall also be present at the initial meeting. If necessary, additional meetings shall be scheduled by the Contractor with all of the affected parties to continue review and resolution of any real or apparent conflicts or interferences.

#### 2.1.2 Construction Preparation Period

**2.1.2.1 Requirement for Project Planning.** No physical work will begin on the construction site until the receipt of a Proceed Order issued by the Owner. The Contract assumes that a Proceed Order will be issued in not more than sixty days from the Effective Date of the Contract. Failure of the Contractor to provide the necessary documentation for the issuance of a Proceed Order shall not entitle the Contractor to any extension of time. If a Proceed Order is not issued within sixty days from the award of the Contract and non-issuance is due to nonperformance by the Contractor, the Contractor may be in default.

**2.1.2.2 Timing of Submission of Documents.** No Proceed Order shall be issued until the Owner has received, in good and proper order, the following documents. The documents shall be submitted in accordance with the following schedule:

2.1.2.2.1 Within ten days of the Notice of Apparent Successful Bid:

- (a) Contract executed by Contractor
- (b) Payment and Performance Bonds in accordance with Article 1.5.1

2.1.2.2.2 Within fourteen days of the Effective Date of the Contract:

- (a) Proof of Insurance as required in Paragraph 1.5.3.1
- (b) List of intended Subcontractors

2.1.2.2.3 Prior to the issuance of the Proceed Order, but in any event, within sixty days of the Effective Date of the Contract:

- (a) Submittal and Shop Drawing Schedule as required in Article 2.2.3
- (b) Construction Progress Schedule as required in Article 2.1.5
- (c) Documents Review Report as required in paragraph 2.1.2.3
- (d) Construction Management Plan as required in Article 2.1.3
- (e) Documentation necessary for receiving land disturbance permits, See Article 2.2.5
- (f) Contractor's Quality Control Program as required in Article 2.1.4
- (g) Written Safety Program as required in Article 1.4.7
- (h) Contractor's Schedule of Rental Rates and Wage Rates

2.1.2.3 Document Review and Verification. Within one business day of receipt of the Effective Date of the Contract Contractor shall commence a review of the plans and Specifications, to identify conflicts, omissions, or constructability issues in the documents. Contractor shall prepare a report containing a list of issues and suggested modifications identified. He shall provide a copy of the report to the Design Professional and the Owner prior to the end of the Construction Preparation Period. If a fire protection sprinkler system is required, the Contractor shall submit to the Design Professional the certificate of competency of the fire protection sprinkler system Trade Contractor as required by State of Georgia Fire Protection and Safety Code. The certificate of competency shall be provided to the Design Professional prior to any work being performed on the fire protection sprinkler system. Nothing in this paragraph shall be construed to impose design responsibility on the Contractor except as noted in the Contract Documents.

**2.1.3 Construction Management Plan.** Contractor shall prepare and furnish to the Owner a thorough and complete plan for the management of the Project from issuance of the Proceed Order through the issuance of the Design Professional's Certificate of Material Completion. Such plan shall include, without limitation, an estimate of the manpower requirements for each trade and the anticipated availability of such manpower, a schedule prepared using the critical path method that will amplify and support the schedule required in Article 2.1.5 below, and the Submittal Schedule as required in Article 2.2.3. The Contractor shall include in his plan the names and resumés of the Project Superintendent, Project Manager and the person in charge of Safety.

**2.1.4 Quality Control Program**

2.1.4.1 Responsibility for Quality of Materials and Installation. Contractor acknowledges that he has full, total, and complete responsibility for providing materials, labor, and all other items necessary for providing the level of quality specified in the Contract Documents. He agrees that this responsibility is indivisible, non-delegable, non-transferable, and not diminished by any inspections provided by the Design Professional or his consulting engineers, nor by any inspections provided by the Owner. In recognition of this, Contractor will prepare for submission and review by the Design Professional, a written program describing the efforts that will be taken to ensure the proper quality level is achieved. The program shall be submitted prior to the issuance of a Proceed Order.

2.1.4.2 Written Program. Contractor's written Quality Control Program shall describe in detail the steps the Contractor will take to ensure quality and will include, without limitation, those personnel, in addition to the Superintendent, who will provide review and verification of the proper installation of the Work. Each Subcontractor having responsibility for more than \$100,000 of the contract cost shall be addressed in the plan. The written program shall include affidavits from each of the involved Subcontractors acknowledging their responsibilities under the Contract in general and the Quality Control Program specifically.

**2.1.5 Construction Progress Schedule; Overall Project Schedule.** The Contractor shall submit for review by the Design Professional and approval by the Owner a Construction Progress Schedule based upon the Design Professional's Preliminary Design and Construction Schedule and prepared using a CPM (Critical Path Method) process within sixty days after the Effective Date of the Contract, utilizing a full-featured software package in a form satisfactory to the Design Professional and Owner, showing the dates for commencement and completion of the Work required by the Contract Documents, including coordination of mechanical, plumbing, and electrical disciplines, as well as coordination of the various subdivisions of the Work within the Contract. Milestones must be clearly indicated and sequentially organized to identify the critical path of the Project. The Construction Schedule will be developed to represent the CSI specification divisions. It shall have the minimum number of activities required to adequately represent to the Owner the complete scope of Work and define the Project's (and each Phase's if phased) critical path and associated activities. The format of the Construction Progress Schedule will have dependencies indicated on a monthly grid identifying milestone dates such as construction start, phase construction, structural top out, dry-in, rough-in completion, metal stud and drywall

completion, equipment installation, systems operational, inspections for Material Completion and Occupancy Date, and Final Completion Date. The Contractor shall submit, along with the Construction Progress Schedule, the Submittal Schedule for approval by the Design Professional, correlating the associated approval dates for the documents with the Construction Progress Schedule. Upon recommendation by the Design Professional and approval by the Owner, the Construction Progress Schedule shall become the Overall Project Schedule, which shall be utilized by the Design Professional, Owner and Contractor. The Contractor must provide the Design Professional and the Owner with monthly updates of the Overall Project Schedule indicating completed activities and any changes in sequencing or activity durations, including approved change orders. See also Article 3.3.5.

**2.1.6 Progress Reports and Information.** When required, the Contractor shall submit to the Owner such schedule of quantities and costs, payrolls, bills, vouchers, correct copies of all subcontracts, statements, reports, correct copies of all agreements, correspondence, and written transactions with the surety on the performance bond that have any relevance to the Work, estimates, records, and other data as the Owner may request that concerns the Work performed or to be performed under this Contract. When requested by the Owner, the Contractor shall give the Owner access to its records relating to the foregoing. (See also Article 1.2.3, Audits.) The above reports shall include, but are not limited to,

- (a) written notice of dates by which specified Work will have been completed
- (b) written notice of dates by which Non-Compliant Work will be made good
- (c) written notice that Non-Compliant Work has been made good
- (d) written notice as to the date or dates by which Work that has not been performed with equal steps and at the same rate required by the Overall Project Schedule shall have been brought into conformity with the Overall Project Schedule
- (e) date by which any undisputed claim of a Subcontractor supplier, or laborer shall have been paid
- (f) written advice regarding the nature and amount of any disputed claim of a Subcontractor, supplier, or laborer, and
- (g) information regarding Work performed under Change Orders.

**2.1.7 Rental Rates and Wage Rates for Change Orders.** As soon as is practical, but prior to the completion of the Construction Preparation Period and in any event prior to the commencement of any Work on the Site, the Contractor shall submit in accordance with the style and format of a specimen to be furnished by the Owner for consideration of the Owner the following: (1) a proposal for rental rates on heavy construction equipment that shall apply in the event Change Order Work is performed, and (2) a proposal for wage rates for the types of project labor that shall apply in the event of the execution of any Change Order Work. Under penalty of false swearing, a principal of the contracting firm shall certify that the proposal for rental rates and proposal for wage rates do not exceed current costs for like services. The Owner will in no event consider a rental rate in excess of eighty percent of the rate set forth in the latest edition of the "Compilation of Nationally Averaged Rental Rates for Construction Equipment" of the Associated Equipment Distributors unless the rates proposed in excess of eighty percent are supported by proof satisfactory to the Owner that the excess rates are reasonable. If the equipment is owned by the Contractor the costs shall be charged at a maximum of eighty percent of market monthly rental rates for the amount of time used. If applicable, transportation costs may be included. The decision of the Owner shall be final, binding and conclusive on all parties. Rental rates shall be payable only for the actual time the equipment is required on the Site.

## 2.1.8 Unit Prices

2.1.8.1 During Construction Preparation Period. Prior to the completion of the Construction Preparation Period, the Contractor shall establish with the Owner Unit Prices not already bid. Examples include additional installation of stormwater management BMPs, any other anticipated Change Order Work that can utilize Unit Prices, or for any items of Work considered necessary by the Design Professional and not established in the Contract Documents.

2.1.8.2 During Construction. Upon request of the Owner the Contractor shall submit written proposals for unit prices to be applied in the event Change Order Work is authorized by the Owner to be performed under Case (b).

2.1.8.3 Calculation of Unit Prices. Unit Prices include all sums for payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss, expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, or injury. Unit prices to cover the addition or reinstallation of stormwater management BMPs shall be calculated by type and linear foot. Unit Prices shall not include any Time Dependent Overhead Costs, as such costs will be added as appropriate pursuant to Section 3, Part 3. The Contractor shall certify that the Unit Prices submitted do not exceed current costs in the industry or trade for like services or materials.

**2.1.9 Building Commissioning Services.** The Owner may provide as a part of its testing services the Building Commissioning services involving the project's HVAC and exhaust systems, temperature control systems, fire detection and alarm systems, emergency power and lighting system, fire suppression system, security locks and security locking control systems, food service equipment (if applicable), and laundry equipment (if applicable). In the event the Using Agency's Program specifies additional commissioning services, the Owner shall procure such services as well. The Owner, through its Executive Administrator, may engage an independent Commissioning Authority. It is the intent of this Article that the Commissioning Authority enforce the requirements mentioned herein and certify that the systems and equipment listed all function properly prior to the initiation of each final inspection.

2.1.9.1 Initial Building Commissioning Plan. The Owner may develop with its Commissioning Authority, the Contractor and the Design Professional, an initial Building Commissioning plan to consist of the following:

2.1.9.1.1 The Building Commissioning Plan shall include a summary of understanding of the design intent for each of the relevant building systems and equipment. Each design intent summary shall establish critical performance criteria that indicates whether a system is properly functioning.

2.1.9.1.2 The Building Commissioning Plan shall include a commissioning schedule listing the duration of each commissioning activity such as system and equipment manual submittal and approval, equipment start-up, and system and equipment training, and combining all such activities in a manner reflecting the inherent subsidiary relationships between activities. This schedule shall be used as a basis for accomplishing the commissioning portion of the Overall Progress Schedule.

2.1.9.2 Define Duties. The Contractor, in coordination with the Commissioning Authority and the Design Professional, shall during preparation of the Contract Documents clearly define all duties and activities required of the various Trade Contractors relating to Building Commissioning, any necessary order in which these activities and duties must take place, and define all critical performance criteria to be achieved.

2.1.9.3 Inspect, Review and Monitor. The Commissioning Authority shall inspect, review and monitor all Building Commissioning related construction activities for timeliness, completeness and conformance with the criteria established by the contract documents, and report same to the Contractor, Owner and the Design Professional. The Contractor and Commissioning Authority shall coordinate and supervise the training activities of each system.

## PART 2 CONTRACT DOCUMENTS AND SITE PLAN

### 2.2.1 Contract Documents

2.2.1.1 Familiarity with Contract Documents. Contractor represents that it has reviewed or will review and become familiar with the Contract Documents, not later than the commencement of the construction phase.

2.2.1.2 Identification of Construction Documents. The Design Professional shall identify the Construction Documents, which shall include, but are not limited to, the Specifications, the Drawings, and all Addenda. The Construction Documents are included within the Contract Documents.

2.2.1.3 Correlation and Intent. It is the intention of the Owner, Design Professional, and Contractor that the Construction Documents include all items necessary for proper execution and full and final completion of the Work. The Contract and Construction Documents (the Contract Documents) are complementary, and what is required by one is as binding as if required by all. Performance by the Contractor is required to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the design intent as expressed in the Contract Documents. The intention of the Owner and the Design Professional is that the Contract and Construction Documents include all labor and materials, equipment, and transportation necessary for the proper execution of the work. It is not intended, however, that materials or work not covered by or properly inferable from any heading, branch, class, or trade of the specifications shall be supplied unless noted on the drawings.

2.2.1.4 Arrangement of Specifications. The Specifications are separated into numbered and titled divisions for convenience of reference. Neither the Owner nor the Design Professional shall assume any responsibility for defining the limits of any subcontracts on account of the arrangement of the Specifications. Notwithstanding the appearance of such language in the various divisions of the Specifications as, "The Plumbing Contractor," "The Electrical Contractor," "The Roofing Contractor," etc., the Contractor is responsible to the Owner for the entire Contract and the execution of all of the Work referred to in the Contract Documents. No partial sets of Bidding

Documents shall be issued by the Design Professional. Any partial documents issued by the Contractor shall be the responsibility of the Contractor.

**2.2.1.5 Conflicts.** The following general principles shall govern the settlement of disputes that may arise over conflicts in the Contract Documents: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large-scale drawings and small-scale drawings, the larger scale shall govern; (c) as between the Contract and the Specifications, the requirements of the Contract, as executed, shall govern. Conflicts noted shall be reported to the Design Professional. The principles set forth herein shall not alter the provisions of Paragraph 1.1.7.1. Schedules, lists, indexes, tables, inventories, written instructions, written descriptions, summaries, statements, classifications, Specifications, written selections, or written designations, although appearing on the drawings, are deemed to be and are Specifications.

**2.2.1.6 Requests for Information (RFI).** In the event the Contract Documents are not complete, definite, and clear, the Contractor shall request the Design Professional in writing for additional instructions and shall furnish the Owner a copy of the RFI. With reasonable promptness but not more than five days thereafter, the Design Professional shall furnish complete, definite, and clear instructions in writing, or by means of drawings, or both. In the event such additional instructions are given orally for expediency, they shall be confirmed in writing or by drawings or both within five days following the oral instructions. Any such additional instructions shall be consistent with the Contract Documents and reasonably inferable therefrom. The Work shall be executed in conformity with the aforesaid instructions. The Design Professional shall furnish the Owner a copy of all additional instructions issued to the Contractor. If, because of events beyond its reasonable control, the Design Professional is not able to meet the specified time period, then it is entitled to ask for additional time from the Owner.

**2.2.1.7 Effect of Addenda, Bulletins, and Change Orders.** No special implication, interpretation, construction, connotation, denotation, import, or meaning shall be assigned to any provision of the Contract Documents because of changes created by the issuance of any (1) Addendum, (2) Bulletin, or (3) Change Order other than the precise meaning that the Contract Documents would have had if the provision thus created had read originally as it reads subsequent to the (1) Addendum, (2) Bulletin, or (3) Change Order by which it was created.

**2.2.1.8 Intellectual Property Rights in Construction Documents, Drawings, and Models.** The drawings, Specifications and other documents prepared by the Design Professional pursuant to this Contract (including, without limitation, the Construction Documents), are the property of the Owner, whether or not the Project for which they are made commences or completes construction. Neither the Contractor nor any Subcontractor or material or equipment supplier shall own or claim a copyright in such drawings, Specifications, and other similar or related documents; Owner shall retain all common law, statutory, and other intellectual property rights with respect thereto. The Contractor must deliver remaining copies of such documents to the Owner upon request or upon completion of the Work, except that the Contractor may keep one copy of such documents for its files. The Contractor shall only use such drawings, Specifications and other documents for this Project. Neither the Contractor nor any Subcontractor or material or equipment supplier may use such drawings, Specifications, and other documents on other projects without the specific written consent of the Owner. All models are the property of the Owner.

## **2.2.2 Documents at the Project Site**

**2.2.2.1 Drawings and Specifications at the Project Site.** The Contractor shall keep at the Site at least one copy of the Contract Documents and Change Orders, all in good order and available to the Design Professional and to his representatives.

**2.2.2.2 Recording Changes.** The Contractor shall record all changes and shall annotate a copy of the drawings to reflect the as-built condition as required in Paragraph 1.1.7.3 above.

## **2.2.3 Submittals.** Submittals required by the Contract Documents shall be prepared specifically for the Work by the Contractor to illustrate some portion of the Work. Submittals are not Contract Documents.

**2.2.3.1 Submittal Schedule.** Within sixty days after the Effective Date of the Contract, the Contractor shall prepare and submit a Submittal Schedule for review and approval of the Design Professional. In establishing the Submittal Schedule the Contractor shall take into account large submittal documents that will require longer review times, e.g., submittals with over fifty sheets of drawings. The Design Professional's approval shall be based on conformance of the Submittal Schedule with the Overall Project Schedule, subject to change from time to time in accordance with the progress of the Work.

**2.2.3.2 Submission and Approval.** The Contractor's Submittals must comply with the Contract Documents. The Contractor shall review and approve all Submittals prior to submission. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant. The Contractor shall submit copies of Submittals as required by the Contract Documents for the Work of the various trades. The Design Professional shall review, approve, or take other appropriate action with respect to shop drawings, samples, or other submissions of the Contractor, including, but not limited to, confirming conformance with the design concept of the Project and with the Contract Documents. The Design Professional shall respond to and return said items to the Contractor within fourteen calendar days from receipt provided that the Submittals are submitted by the Contractor in accordance with the required Submittal schedule. The Design Professional shall review and give comment or approval to Submittal schedule within fourteen calendar days from receipt. Large submittal documents may require longer review times, e.g., submittals with over fifty sheets of drawings. If, because of events beyond its reasonable control, the Design Professional is not able to meet the specified time period, then it is entitled to ask for additional time from the Owner. The Contractor shall make all corrections required by the Design Professional and furnish such corrected copies as may be needed. If the Contractor believes that any corrections required by the Design Professional constitute a change to the contract, the Contractor shall immediately notify the Design Professional and Owner and request instructions. By forwarding the approved Submittals to the Design Professional, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. The Design Professional's approval of Submittals shall not relieve the Contractor from the responsibility for errors of any sort in Submittals or schedules. The Contractor shall perform no portion of the Work for which the Contract Documents require Submittals until the Design Professional has approved the respective Submittal. The Contractor shall maintain at the Site one copy of all approved Submittals.

**2.2.3.3 Cost of Additional Review.** The Design Professional shall be responsible for an initial and one subsequent review of the Submittal. Where the subsequent Submittal is not accepted due to noncompliance with the Contract Documents, the Contractor shall be responsible for payment for the additional time required by the Design Professional to complete the Submittal review.

**2.2.4 Manufacturer's Recommendations.** All work or materials shall be installed in accordance with the manufacturer's recommendations and requirements. The Contractor shall obtain the manufacturer's recommendations and requirements, for its use at the Site in executing the Work, copies of bulletins, circulars, catalogues, or other publications bearing the manufacturer's titles, numbers, editions, dates, etc. If the manufacturer's recommendations and requirements are not available, the Contractor shall request installation instructions from the Design Professional.

#### **2.2.5 Site Plan**

**2.2.5.1 General.** The Design Professional is responsible for providing the initial sealed Site Plan as a part of the Bidding Documents. During the Pre-Commencement phase, the Contractor shall review the initial Site Plan and make and submit recommendations for any changes to the initial Site Plan. The Contractor is required to obtain the land disturbance permit(s) applicable to the Owner that implement the National Pollution Discharge Elimination System (NPDES) requirements for stormwater management for construction activities from the appropriate issuing authority. Compliance requires that there be properly designed Best Management Practices (BMPs), properly installed BMPs, and inspection and maintenance of the installed BMPs.

**2.2.5.2 Implementation.** The Design Professional will depict upon the Site Plan its initial recommendations as to elements of the erosion, sedimentation, and pollution control plan, specifying his recommended design of BMPs for the Project, including stormwater management facilities, and other like matters. It is the Contractor's responsibility to review the design of the BMPs and submit any changes to the plan, including the Contractor's desired use of entrances to the Site, Contractor's trailer(s) location, laydown areas and other similar matters affecting the design and implementation of the BMPs. The Design Professional and Contractor shall arrive at a final sealed Site Plan for submission to the permitting officials that enables the land disturbance permitting of the Project. The Design Professional and Contractor shall resolve with the local permitting official any deficiencies by the end of the Pre-commencement period.

**2.2.5.3 Installation, Inspection, and Maintenance.** The Contractor is responsible for installation and maintenance of the BMPs as a part of its Bid. The Design Professional shall obtain the services of a qualified testing laboratory to inspect the BMPs in accordance with the permits, the costs of such inspections to be borne by the Owner. In the event of Abnormal Weather Conditions or force majeure, the Contractor shall be compensated for re-installation of BMPs at established Unit Prices.

**2.2.6 Geological and Archeological Specimens.** If, during the execution of the Work, the Contractor, any Subcontractor, or any servant, employee, or agent of either should uncover any valuable material or materials, such as, but not limited to, treasure trove, geological specimens, archival material, archeological specimens, or ore, the Contractor acknowledges that title to the foregoing is vested in the Owner. The Contractor shall notify the Owner upon the discovery of any of the foregoing, shall take reasonable steps to safeguard it, and seek further instruction from the Design Professional. Any additional cost incurred by the Contractor shall be addressed under the provision for changed conditions. The Contractor agrees that the Geological and Water Resources Division and the Historic Preservation Division of the Georgia Department of Natural Resources may inspect the Work at reasonable times.

## SECTION 3 – CONSTRUCTION PHASE

### PART 1 – CONSTRUCTION PHASE SERVICES

#### 3.1.1 Basic Construction Services

3.1.1.1 Requirement to Commence Work. The Contractor shall under all circumstances commence work under this Contract no later than ten days after the Proceed Order Date of the Proceed Order.

3.1.1.2 Payment for Services and Work. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supplies, labor, services, water, tools, equipment, light, power, transportation, and other utilities and facilities necessary for the proper execution and completion of the Work.

3.1.1.3 Quality of Materials and Workmanship. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials and work. The burden of proof is on the Contractor.

3.1.1.4 Quality and Discipline of Employees. The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

3.1.1.5 Failure of the Contractor to Supply Workmen. A Notice of Non-Compliant Work may be issued for failure of the Contractor to supply enough workers or enough materials or proper materials.

#### 3.1.1.6 Superintendence and Supervision by Contractor.

3.1.1.6.1 Supervision by Contractor. The Contractor shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all drawings, specifications, and instructions and shall at once report to the Design Professional any error, inconsistency, or omission that he may discover, but he shall not be held responsible for their existence or discovery.

3.1.1.6.2 Superintendent of Contractor. The Contractor shall keep on this work during its progress and until the Final Certificate has been executed by the Design Professional a competent Project Superintendent and any necessary assistants, all satisfactory to the Design Professional and Owner. The Project Superintendent shall not be changed except with the consent of the Owner and the Design Professional unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent represents the Contractor and all directions given to the superintendent shall be as binding as if given to the Contractor.

3.1.1.6.3 Replacement Project Superintendent. If the Contractor terminates the Project Superintendent or, if the Contractor, for any reason, engages a Project Superintendent different from the one originally assigned to the Project, Contractor must ensure that the replacement Project Superintendent has similar qualifications and experience as the originally identified Project Superintendent. Furthermore, the Contractor must obtain the Owner's prior written approval before engaging a permanent replacement Project Superintendent.

**3.1.2 Measurements and Dimensions.** Before ordering material or doing work that is dependent upon coordination with building conditions, the Contractor shall verify all dimensions, elevations, grades, and pitch by taking measurements at the building and shall be responsible for the correctness of same. Any discrepancies between the drawings and/or specifications and the existing conditions shall be referred to the Design Professional for additional instructions before any work affected thereby is begun.

**3.1.3 Rain Water, Surface Water, and Back-up.** The Contractor shall protect all Work, including but not limited to, excavations and trenches, from rainwater, surface water, and back up of drains and sewers. The Contractor shall furnish all labor, pumps, shoring, enclosures, and equipment necessary to protect and to keep the Work free of water.

**3.1.4 Dust Control.** Dust-proof enclosures or partitions for protection wherever dusty or dirty work is performed and dampening of debris to avoid dusting when removed shall be provided and included as a cost of the work.

**3.1.5 Cutting, Patching, and Fitting.** The Contractor shall do all cutting, patching, and fitting of the Work that may be required to make its several parts come together properly and fit.

**3.1.6 Space Conditions.** All pipes passing through floors, walls, and ceilings shall be installed with sufficient space between them to permit installation of pipe insulation and floor, wall, and ceiling plates without cutting of insulation or plates. Roughed-in dimensions shall be prepared by the Contractor to accomplish this requirement. The Contractor shall locate all equipment that must be serviced, operated, or maintained in fully accessible positions. This provision includes but is not limited to valves, traps, cleanouts, motors, controllers, switchgear, drain points, filter, access doors, and fire dampers. If spaces, dimensions, or other design conditions do not permit compliance with the present article, the Contractor shall file a request in writing with the Design Professional for additional instructions, furnishing a copy to the Owner.

**3.1.7 Cleaning Up**

**3.1.13.1 During Construction.** At all times, the Contractor shall keep the premises free from accumulations of waste material or rubbish caused by his employees, Trade Contractors, or work. Periodically during the course of the Work he shall remove all his rubbish from and about the building and all his tools, scaffolding, and surplus materials and shall leave his work "broom-clean" or its equivalent, unless more exactly specified. Prior to Final Completion by a Trade Contractor of any Trade Contract, Contractor shall require the Trade Contractor to remove from the Work and Site all temporary systems, tools, equipment, machinery, and surplus materials not required for the continued performance of any Work under the Trade Contract or this Contract. In case of dispute, after 48 hours written notice the Owner may remove the rubbish and charge the cost to the Contractor.

**3.1.13.2 Prior to Material Completion.** Prior to the inspection for Material Completion of the Project Contractor shall remove from the Site all wastes and rubbish, clean all tile and glass surfaces, replace broken glass, remove stains, paint spots, and clean and polish all plumbing fixtures and equipment, leave the Work "vacuum clean" or its substantial equivalent, all hard surface floors swept and mopped, all carpeted floors vacuumed, all surfaces other than floors dusted, blower dusted, or wiped (depending on type of surface) and surface blemishes cleaned, all glazing washed [both sides], and all electrical and mechanical equipment and fixtures cleaned, with all ductwork cleaned and filters replaced, if such are dirty, before other cleaning is started, and re-cleaned if any dust or dirt has gotten into the ductwork during the cleaning process. The Contractor shall restore existing facilities such as roads, other paved surfaces, fencing, curbing and the like at the Site to at least their preconstruction conditions; provided, however, the Contractor may, in an orderly fashion, leave such equipment and supplies at the Site as necessary to achieve Final Completion of the Project. This cleaning must be completed before the Contractor can expect the Design Professional to commence the inspection for Material Completion. To achieve Material Completion, the Contractor shall have fully cleaned the Site – all debris must have been removed from the site and all paved surfaces must have been broom swept and thoroughly hosed down.

**3.1.8 Duty of Contractor to Report Defects.** If any part of the Contractor's work depends for proper execution or results upon the work of any Separate Contractor to the Owner, the Contractor shall inspect and promptly report to the Design Professional any apparent defects in such work that render it unsuitable for such proper execution and results.

**3.1.9 Duty of Contractor to Report Conflicts.** To ensure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Design Professional any discrepancy between the executed Work and the drawings or specifications.

**PART 2            CHANGES TO THE WORK**

**3.2.1 Acknowledgement of Existing Physical Conditions.** In undertaking the work under this Contract, the Contractor acknowledges that he has visited the premises and has taken into consideration all open and apparent conditions that might affect his work. No claim based on lack of knowledge of existing conditions shall be allowed unless the existing physical conditions cannot be discovered by a reasonably observant person. Any claims relating to conditions that are materially different from the Contract Documents that were not open and apparent may be adjusted as provided in this Part.

**3.2.2 Owner's Right to Make Changes.** Without invalidating the Contract, the Owner, by Change Order and without notice to the sureties, may authorize or order extra work or changes by altering, adding to, or deducting from the Work or the Contract Time, the Contract Sum being adjusted accordingly. All Change Orders shall be performed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of signing of the Change Order. (See Change Order formats in Section 7.) Prior to the issuance of the Proceed Order, the Contractor and the Owner shall advise each other in writing of their designees authorized to accept and approve changes to the Contract Sum and the limits to each designee's authority. Should any designee or limits of authority change during the time this Contract is in effect, the Contractor or Owner shall give written notice to the other as provided in Article 1.1.5. There is no legal limitation on the Owner's right to make changes such as may be, in the Owner's sole discretion, useful or desirable to the Project.

**3.2.3 Changes Forbidden without Consent of Owner.** Neither the Design Professional nor the Contractor shall make any change whatsoever in the work without an approved Change Order. In the absence of an approved Change Order, the Contractor shall have no claim for payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss, expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury, damages, or time based upon or resulting from any change. The provisions of this Article do not apply to emergencies as described in Article 1.4.4.

**3.2.4 Form and Execution of Change Orders**

**3.2.4.1 The Change Order.** The Change Order is the instrument by which adjustments in the Contract Sum and the Contract Time are effected. The Change Order shall be accompanied by a breakdown as set forth in Paragraph 3.2.7.4. The breakdown is for the purpose of enabling the Design Professional and the Owner to make a judgment on the dollar amount of the adjustment in the Contract Sum and is not a part of the Change Order. No condition, term, qualification, limitation, exception, exemption, modification, or proviso, except as set forth in this Part, shall appear in the breakdown. Only such conditions, terms, qualifications, limitations, exceptions, exemptions, modifications, and provisos as are permitted under this Part are valid. The Design Professional shall certify to the dollar amount and description of the adjustments permitted by the Change Order.

**3.2.4.2 Execution of Change Orders.** Change Orders shall be signed by the Contractor, ordinarily certified by the Design Professional, and approved by the Owner in accordance with the form of Change Order prescribed by the Owner. No request for payment by the Contractor for a Change Order shall be due, nor shall any such request appear on an Application for Payment, until the Change Order is executed by the Owner. In the event of emergency (see Article 1.4.4) or significant impact to the Overall Project Schedule, the Owner shall direct the Change Order to proceed upon a Force Account until the cost and time is resolved in the manner set forth in Paragraph 3.2.7.3 below.

**3.2.4.3 Disagreement between Design Professional and Contractor.**

**3.2.4.3.1 As to Contract Sum.** Should the Design Professional disagree with the Contractor as to the amount of the adjustment to the Contract Sum and such disagreement is not resolved between them within seven days, the Owner, if it desires the Change Order work to proceed, may direct a Change Order for Force Account or Indeterminate Units.

**3.2.4.3.2 As to Contract Time.** Should the Design Professional disagree with the Contractor as to the amount of the adjustment to the Contract Time and such disagreement not be resolved between them within seven days, the decision of the Design Professional as to any adjustment in the Contract Time, including any designation by the Design Professional of such time as is eligible for Time Dependent Overhead Costs, shall be final, subject to protest to the Owner of the Design Professional's decision as set forth in Section 5 Part 2.

**3.2.4.3.3 As to Other Disagreements.** Should the Design Professional disagree with the Contractor as to matters other than Contract Sum or Contract Time, the dispute shall be resolved by the Owner as set forth in Section 5, Part 2.

**3.2.4.4 Change Order Conditions.** All Change Orders are issued under the following conditions and shall contain the following language as appropriate:

**3.2.4.4.1 For Lump Sum Change Order:** The payment and extension of time (if any) provided by this Change Order constitutes compensation in full to the Contractor and its Subcontractors and Suppliers for all costs and markups directly and indirectly attributable to the Change Order herein, for all delays related thereto and for performance of changes within the time stated.

**3.2.4.4.2 For Force Account or Indefinite Amount Change Order:** The payment and extension of time (if any) provided by this Change Order constitutes interim compensation to the Contractor and its Subcontractors and Suppliers for actual costs and markups directly and indirectly attributable to the Change Order herein, for all delays related thereto and for performance of changes within the time stated.

**3.2.4.4.3 For All Change Orders:** Any changes or reservations by the Contractor to the representations and releases in the Change Order, or refusal of the Contractor to execute the Change Order, shall be a material breach of this Contract that may be sufficient cause to issue a declaration of default.

**3.2.5 All Cost and Time Impacts to be Included.** Each Change Order shall include all time and monetary impacts of the change. Failure to include a change in Contract Time or in Contract Sum in Change Orders shall be considered a zero price/zero time Change Order and shall waive any change in Contract Time and Contract Sum. Commencement of Work upon a Change Order is conclusive proof that the Contractor accepts the Change Order.

**3.2.6 Changes in Contract Time.** All Change Orders must state that the Contract Time and the Material Completion and Occupancy Date either are not changed or are increased or decreased by a specific number of Days. The CONTRACTOR must provide written justification for the extension to the Design Professional and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior Change Orders to the Contract. No extension to the Contract Time shall be allowed unless the additional or changed Work increases the length of the critical path beyond the Material Completion and Occupancy Date. If approved, the increase in time required to complete the Work shall be added to the Contract Time. The Owner may decrease, by Change Order, the Contract Time when an Owner-requested deletion from the Work results in a decrease in the actual time required to complete the Work as demonstrable on the critical path of the Construction Progress Schedule. Eligibility and processing requirements for Time Dependent Overhead Costs for compensable delay is addressed in Article 3.3.8 and 3.3.10.

**3.2.7 Determining the Cost to Owner for Changes.** The cost to the Owner of any change shall be determined in one or more of the following ways:

**3.2.7.1 Lump Sum.** The Change Order cost is determined by mutual agreement as a lump sum amount changing the Contract Sum allowed for completion of the Work. The Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials and equipment required as well as any mark-up used. The price change shall include the cost percent allowed for the Contractor's overhead and profit and, if eligible, Time Dependent Overhead Costs.

**3.2.7.2 Unit Price Work.** The Change Order cost is calculated by using unit prices and calculating the number of net units of Work in each part of the Work that is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices as this markup is included within the unit prices. Time Dependent Overhead Costs will be added if eligible.

**3.2.7.3 Force Account.** The Change Order cost is accomplished by Force Account in the event the Contractor and Design Professional cannot agree on the cost of the Change Order or the cost cannot be reasonably determined prior to beginning the Work.

**3.2.7.3.1** A Force Account is the establishment by the Owner's Incumbrance Record of a maximum dollar amount (Stipulated Maximum Sum) beyond which no changed work may be undertaken, subject to amendment, for funding all costs of a Change Order. As the Work authorized by the Change Order progresses, the Contractor must provide an accounting of actual costs incurred in accomplishing the Work. The accounting must include an annotated copy of the Overall Project Schedule to accurately show the status of the Work at the time the Change Order utilizing a Force Account is issued, to show the start and finish of the changed Work, and to show the status of the Work when the changed Work is completed.

3.2.7.3.2 Actual costs, except as otherwise agreed to in writing by the Owner, shall not exceed those prevailing for the trades or crafts, materials, and equipment in the locality of the Project, may include only those items listed as allowable in Article 3.2.9, and shall not include any of the costs listed as not allowable in Article 3.2.10. The Owner shall be permitted, on a daily basis, to verify such records and may require such additional records as are necessary to determine the cost of the change to the Work.

3.2.7.3.3 The Owner shall prescribe the dollar limit for a Force Account in writing by authorizing a Stipulated Maximum Sum of money to be committed toward execution of the said change, and the Contractor shall have no authority to perform any change that will cost the Owner in excess of the Stipulated Maximum Sum. The Stipulated Maximum Sum shall be based on the estimated cost of the Work and the Contractor's allowance for overhead and profit as set forth in 3.2.8 below, including any time extension, Time Dependent Overhead Costs (if eligible), and a reasonable contingency. It shall be the sole responsibility of the Contractor to apply in writing to the Owner, NOT to the Design Professional, for an increase in the Stipulated Maximum Sum if the total value of the Work is approaching and might exceed the Stipulated Maximum Sum.

3.2.7.3.4 Within fourteen days of the conclusion of such Work ordered by Force Account, the Contractor and the Owner shall arrive at the total lump sum cost for the Change Order. Such lump sum cost shall be incorporated into and finalize the Change Order and shall reference and close the Incumbrance Record establishing the Force Account.

3.2.7.4 Breakdown of Expenditures. The Contractor shall review any Owner requested or directed change and shall respond in writing within fourteen calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the Contract Time and Sum. The Contractor shall furnish to the Owner and the Design Professional an itemized breakdown of the quantities and prices and expenditures for labor and materials used in computing the proposed change in Contract Sum, in the form prescribed by the Owner, and the breakdown shall be accompanied by the following declaration:

*I do solemnly swear to the best of my knowledge, information, and belief, that the costs shown hereinabove do not exceed current costs for like services or materials in the locality of the Project and, in the case of a Force Account, the costs represented do not exceed the actual costs to the Contractor; and that the quantities shown do not exceed actual requirements.*

The Contractor shall obtain and furnish as back up to the Contractor's breakdown a separate breakdown for each subcontractor's charges prepared by each subcontractor on the letterhead of the subcontractor and properly signed by the subcontractor. The Owner shall review the Contractor's proposal and respond to the Contractor within fourteen days of receipt.

### **3.2.8 Cost Allowable for Changes to the Work, Allowances for Contractor, and Permissible Expenditures.**

3.2.8.1 Overhead and Profit. The percentage for overhead and profit to be used in calculating additive changes in the Work (not including changes covered by unit prices) shall not exceed the percentages for each category listed below. Said percentages for overhead and profit shall be applied only on the net cost of the changed Work, (i.e., the difference in cost between original and revised Work).

3.2.8.1.1 Contractor. If the Contractor does all or part of the changed Work with employees that work directly for the Contractor, its markup for overhead and profit on the changed Work the Contractor performs with its employees shall be twenty-five percent of the first \$50,000 of the net Allowable Costs, and twenty percent of the remaining net Allowable Costs, if any.

3.2.8.1.2 Subcontractor. If a Subcontractor does all or part of the changed Work with employees that work directly for the Subcontractor, the Subcontractor's markup for overhead and profit on the Work the Subcontractor performs with its employees shall be twenty-five percent of the first \$50,000 of the net Allowable Costs, and twenty percent of the remaining net Allowable Costs, if any. Determination of a Subcontractor's extended overhead costs, if any, is the responsibility of the Contractor.

3.2.8.1.3 Contractor's Markup on Subcontractor' Work. The Contractor's management markup on the subcontractor's net additional allowable expenditures shall be seven-and-one-half percent. The Contractor shall not be permitted the overhead and profit markup on Time Dependent Overhead Costs but shall be permitted a management markup of five percent on Time Dependent Overhead Costs.

3.2.8.1.4 **Second and Lower Tier Subcontractor.** If a Subcontractor at any tier does all or part of the changed Work with its employees, the Subcontractor's markup on the Subcontractor's work with its employees shall be twenty-five percent of the first \$50,000 of the cost, and twenty percent of the remaining cost, if any. The management markup of a Subcontractor's work by the Contractor and all intervening tiers of Subcontractors shall not exceed seven-and-one-half percent for the Contractor and any Subcontractor, or a total of fifteen percent for the changes to the Work.

3.2.8.2 The above percentages shall be applied to the net Allowable Costs, if any, as limited and defined in this Part. If the net difference between Allowable Costs and credits to the Owner results in a decrease in the Owner's cost, the amount of credit allowed the Owner shall be the net decrease without any allowance for profit and overhead. Other than any eligible Time Dependent Overhead Costs, all costs that are not Allowable Costs in Article 3.2.9 or are disallowed in Article 3.2.10 shall be considered as overhead and shall be exclusively compensated in the allowances provided for in paragraph 3.2.8.1 above.

**3.2.9 Allowable Costs for Changes in the Work.** Allowable cost for changes to the Work are limited to the following:

3.2.9.1 Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by the Owner, set at rates established in the manner set forth in Article 2.1.7.

3.2.9.2 Materials incorporated into the change to the Work, including costs of transportation, handling, fuel, and on-site storage, if applicable.

3.2.9.3 Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If the equipment is rented expressly for accomplishing the change in the Work, that cost shall be the rental rate according to the terms of the rental agreement, which the Owner shall have the right to approve, or shall be set at rates established in the manner set forth in Article 2.1.7. The decision of the Owner shall be final, binding, and conclusive on all parties.

3.2.9.4 Costs of increases in premiums for the Contractor's Payment Bond and Performance Bond or for bond premiums for its Subcontractors, to the extent that such increased costs are a result of coverage adjustments for changes in Work approved by the Owner. Prior to requesting payment for the Change Order work, the Contractor shall provide proof of its notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up. In no event shall a cost in excess of two percent of the cost of the change be allowable.

3.2.9.5 Sales, consumer, use, and other applicable taxes that are legally in effect at the time the change order is approved.

3.2.9.6 Any other costs directly attributable to the change in the Work, such as professional engineering costs, except those set forth in Articles 3.2.8 and 3.2.10.

3.2.9.7 For Change Order Work directed by the Owner, where the headquarters of the Subcontractor actually performing the work is more than 100 miles from the Project Site, the Subcontractor may include in the cost of the Change Order a stipend of fifty dollars per day for each worker performing work at the Site if that worker is receiving a per diem under present company policy, not to exceed the number of workers and number of days determined by Design Professional's decision to be attributable to the new work so ordered, so long as the number of workers and number of days attributable to any deleted work is deducted there from. No allowance for overhead or profit as set forth in Article 3.2.8 may be added to the Change Order cost on account of the stipend amount, and the full amount of the stipend must be actually paid to the eligible worker or it shall be forfeited by the Contractor and Subcontractor(s).

3.2.9.8 The Owner may require any or all of the following documentation to be provided by the Contractor to support the Allowable Costs:

- (a) certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor or other worker;
- (b) equipment type & model, dates, daily hours, total hours, rental rate or other specified rate, and extension for each unit of equipment;
- (c) invoices for materials showing quantities, prices, and extensions;
- (d) daily records of waste materials removed from the Site and/or fill materials imported to the Site;

- (e) certified measurements of over excavations, piling installed and similar work; and/or
- (f) transportation records for materials, including prices, loads, and extensions.

**3.2.10 Costs Not Allowable for Changes in the Work.** Costs not allowable under any circumstances are as follows:

3.2.10.1 Costs due to the negligence of the Contractor, Subcontractors, or other persons for whom the Contractor is responsible, including but not limited to costs of delay, costs for the correction of Non-Compliant Work, costs for improper disposal of material, costs for equipment wrongly supplied, costs for the Contractor's delay in performing the Work, or costs for delay in ordering and obtaining normally available materials or equipment.

3.2.10.2 Home office expenses, including payroll costs for the Contractor's or any Subcontractors' officers, executives, administrators, accountants, counsel, engineers, timekeepers, estimators, clerks, and other similar administrative personnel employed by the Contractor, whether at the Site or in the Contractor's or a Subcontractor's principal or branch office for general administration of the Work (including those referred to as "Eichlay costs"). These costs are deemed overhead included in the percentage markups allowable in Article 3.2.8 above.

3.2.10.3 Home and branch office expenses that include, but are not limited to, expenses of Contractor's home and branch offices, Contractor's capital expenses, interest on Contractor's capital used for the Work, charges for delinquent payments, small tools, incidental costs, rent, utilities, telephone and office equipment, and other general overhead expenses of the home and branch office (including those referred to as "Eichlay costs").

3.2.10.4 Where Work is deleted from the Contract (by Bulletin, Change Order, or otherwise) prior to commencement of that Work without substitution of other similar Work, one hundred percent of the Contract Sum attributable to that Work shall be deducted from the Contract Sum. However, in the event that material submittals have been approved and orders placed for said materials, a lesser amount as justified by proper documentation shall be deducted from the Contract Sum. The credit if any to the Owner for reduced premiums on payment bonds and performance bonds shall be in all cases one hundred percent of the credit. If the deductive Change Order affects the critical path or the schedule and it causes an overall reduction in the Contract Time, jobsite time dependent expenses shall be included in the deduction at the rate established in the Contract for Time Dependent Overhead Costs.

3.2.10.5 Wages of a foreman, if the foreman is concurrently supervising other Work at the Site.

3.2.10.6 Premiums for bonds required of Subcontractors by the Contractor.

**3.2.11 Change Order Formats.** Formats for Lump Sum Change Orders and for Change Orders based upon either a force account or upon unit pricing with an indeterminate number of units are in Section 7, Forms.

**3.2.12 Changes due to Subsurface or Other Unforeseen Conditions.**

3.2.12.1 Subsurface Conditions. Unless the Contract Documents stipulate specific quantities and units of rock or unsuitable soils, the Contractor shall assume material below the surface of the Earth to be earth and other material that can be removed by power shovel or similar equipment. Should conditions encountered below the surface of the ground be at variance to the number of unit requirements as indicated by drawings or specifications, and absent an agreed-upon unit price established prior to the bid by Addendum, or after contract execution by Change Order, the Contract Sum and/or time shall be adjusted as provided in the Contract Documents for changes in the work.

3.2.12.2 Other Unforeseen Conditions. If unknown physical conditions are encountered at the Site that differ materially from those indicated in the Contract Documents, then the Contractor shall give notice to the Design Professional promptly before conditions are further disturbed, but in no event later than two business days after the first observance of the conditions. The Design Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost or time required for performance of any part of the Work, the Design Professional may recommend an adjustment by Change Order to the Contract Sum or Contract Time, or both. If the Design Professional determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall so notify the Owner and the Contractor in writing, stating the reasons. Protest by either party of the Design Professional's decision shall be in accordance with Section 5, Part 2.

**3.2.13 Compensable Rock.** CAUTION: No rock for which extra compensation is expected to be received shall be removed except pursuant to and in conformity with a written authorization or order of the Owner. Unless otherwise provided in the Bid Documents, no removal of rock as defined herein shall be included in the Bid. Shale, rottenstone, or stratified rock that can be loosened with a pick or removed by a hydraulic excavator equivalent to a Caterpillar Model 215, a single engine pan (Caterpillar 621 or equivalent) that is pushed by a crawler tractor (Caterpillar D-8K or equivalent), or similar equipment shall not be classified as rock.

3.2.13.1 Definitions of Compensable Rock. Rock, for the purposes of pricing its removal, is defined as follows:

3.2.13.1.1 Rippable Rock. Rippable rock is defined as any material that can be ripped with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard.

3.2.13.1.2 Mass Rock. Mass rock is defined as any material that cannot be ripped with a single- tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard.

3.2.13.1.3 Trench Rock. Trench rock is defined as any material that must be removed from a trench that cannot be excavated with a hydraulic excavator having a bucket curling force rated at not less than 18,300 pounds (Caterpillar Model 215 or equivalent) and occupies an original volume of at least one-half cubic yard.

3.2.13.1.4 Caisson Rock. Caisson Rock is defined as material that must be removed from a shaft which cannot be penetrated faster than two feet per hour (fifteen minute minimum) using a rock auger with bullet-shaped hardened steel teeth (Kennametal bits or equivalent), and the drilling equipment should have the capacity to produce a continuous torque of at least 1,000,000 inch pounds and a downward force of at least 50,000 pounds (a Hughes LLDH in good working condition) for piers up to seventy two inches in diameter. Use of equipment with greater torque or downward force modifies the definition of refusal to be the point at which the equipment cannot penetrate faster than two feet per hour (fifteen minute minimum). In rare cases, refusal may occur on a rock seam or boulder above the general massive rock surface. The compensation for Caisson Rock should include only material that cannot be penetrated by the rock auger at the specified rate.

3.2.13.2 Pricing for Compensable Rock. All compensable rock shall be priced by unit prices upon volume prior to removal and shall be calculated by survey and engineering calculations. No rock shall be priced by truckload, bucket load, or other similar pricing methods. Unit prices shall be determined prior to removal, either in the Contract Documents or by Change Order. Unit prices shall be inclusive of all profit and overhead, except for Time Dependent Overhead Costs. Unit prices shall include the following:

- (a) Excavation and removal of all rubble;
- (b) Addition and removal of overburden for blasting;
- (c) Excavation of all blast rubble;
- (d) Replacement of suitable soils in areas of over blasting or over removal; and
- (e) All costs of labor, equipment, supplies, blasting materials, safety requirements, drayage, haulage, and disposal, including offsite disposal costs.

The Contractor expressly agrees that the Contractor's sole monetary remedy for extensions of Contract Time due to removal of rock that materially affects the completion of the Work by lengthening the critical path of the Overall Project Schedule shall be the daily rate established in the Time Dependent Overhead Costs in the Contract. Extensions of Time and compensation for Time Dependent Overhead Costs for compensable rock are to be processed as a Change Order pursuant to Article 3.2.6.

**3.2.14 Subcontractor Claims for Extended General Conditions Costs.** The daily rate for Time Dependent Overhead Costs established in the Contract is intended to compensate the Contractor for the additional jobsite overhead costs resulting from any compensable time extension. The Contractor, in its sole discretion, shall be responsible for allocating the Time Dependent Overhead Costs among its affected subcontractors and itself. Owner's payment of the Time Dependent Overhead Costs to the Contractor, and Contractor's allocation thereof, shall constitute the only monetary compensation the Contractor and subcontractors shall be entitled to receive as reimbursement for Time Dependent Overhead Costs incurred as a result of any compensable delay to the Project.

**3.2.15 Release of Claims.** The execution by the Contractor of a Change Order shall be and operate as a release to the Owner of all claims by the Contractor and of all liability owing to the Contractor for all things done or furnished in connection with the Work described in the Change Order. The execution of any Change Order by the Owner shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve the Contractor of responsibility for faulty materials or workmanship or operate to release the Contractor or his surety from any obligation arising under the Contract or the Performance Bond or Payment Bond.

**3.2.16 Sole Source Designation for Change Order Work.**

3.2.16.1 Definition of Sole Source. As used in this Article 3.2.16, "Sole Source" means a Trade Contractor or Supplier or Subcontractor specified by name in a Bulletin as the exclusive source from which conforming goods or services may be obtained. Designation of goods or services by reference to a named source accompanied by the qualification "or equal" or similar language is not a designation of a Sole Source as that term is defined herein.

3.2.16.2 Limitations. This Article 3.2.16 applies only to Bulletins referenced in a proposed Change Order that designates a Sole Source that was not designated in the Bidding Documents. Except as stated in this Article, the Contractor's inability to obtain payment and performance bonds from Sole Source Subcontractors or warranties from Subcontractors, as required under the Bidding Documents for this Contract, shall not otherwise excuse the Contractor from its bonding and warranty obligations under this Contract.

3.2.16.3 Sole Source as Grounds for Rejection of a Change Order. If a Change Order is submitted to Contractor for the purposes of adding a Bulletin to this Contract and said Bulletin designates a Sole Source from which Contractor is required to procure goods or services necessary to perform the Work, which Sole Source has not been designated previously, Contractor shall be entitled to reject the proposed Change Order if the designated Sole Source refuses to provide to Contractor the warranties, bonds, terms or schedule required under the Contract Documents, including any warranty or terms or schedule required by Bulletins referenced in the proposed Change Order. In such event, Contractor shall give written notice to the Owner rejecting the proposed Change Order and, if possible, shall accompany said written notice with a proposal from Contractor for changes or modifications to the Bulletin so as to eliminate the Sole Source designation but to achieve goods or services equal in quality or function. The Owner may then require the Design Professional to revise the subject Bulletin so as to eliminate the designation of the Sole Source by incorporation of Contractor's proposal or otherwise. Upon revision of the Bulletin by the Design Professional and approval thereof by the Owner, the Owner shall again submit to the Contractor a proposed Change Order for the purpose of adding the revised Bulletin to this Contract. If the Owner decides to retain the Sole Source in the Change Order and Contractor cannot acquire the full contractually required warranties from the Sole Source, Contractor shall be held only to the warranty terms and schedule obtainable from the Sole Source.

3.2.16.4 No Excuse Without Notice. If Contractor accepts a proposed Change Order adding a Bulletin to this Contract that designates a Sole Source without invoking this Article and putting the Owner on notice, Contractor shall not be excused from its obligations with respect to the described Work by reason of the refusal of a designated Sole Source to provide warranties as required under this Contract.

**PART 3 TIME**

**3.3.1 Time is of the Essence.** Time is of the essence of this Contract and all obligations hereunder.

**3.3.2 Competent Management of Time.** The Contractor has represented to the Owner, in order to be awarded this contract, that the Contractor is experienced in managing construction in accordance with contract requirements and in a timely manner and that the Contractor has included in his proposal sufficient sums to carefully and competently manage this project for completion within the stipulated Contract Time.

**3.3.3 Contract Time**

3.3.3.1 Fair and Reasonable. The Contractor has carefully examined and analyzed the Site, the Contract Documents, and all known factors related to his ability to complete this project within the Contract Time stipulated. By submitting his bid for this project, the Contractor agrees that the stipulated Contract Time is fair and reasonable.

3.3.3.2 Delays. The parties recognize there may be delays to perform Change Order work in the event that conditions encountered at the Site are different from those indicated in the Contract Documents, or to perform Change Order work to correct errors in the plans and specifications. Execution of any change must be authorized. In such event, there shall be an adjustment in the Contract Sum as provided in the Contract

Documents for changes in the Work, the parties agree that such delays are not a ground for claiming extraordinary remunerations except as set forth in this Contract in Article 3.3.8 below.

### **3.3.4 Commencement, Prosecution, and Completion**

**3.3.4.1 Commencement, Prosecution, and Completion of Work.** The Contractor will be required (a) to commence the Work under this Contract on the applicable Proceed Order Date, (b) to prosecute the Work with faithfulness and energy (c) to install the various parts of the work with equal steps shown on the Overall Project Schedule and at the same rate (or better) shown on the Overall Project Schedule and (d) to complete the Work within the Contract Time, as adjusted. Commencement of the Work shall mean actual physical work on the Site. Unless otherwise agreed, and subject to Change Orders, Material Completion of the Project must be achieved on or before the date established as the Material Completion and Occupancy Date under the Schedule.

**3.3.4.2 Contractor's Acceleration for failure to meet Schedule Requirements.** In the event the Contractor shall be delinquent in respect to achieving the Milestone dates established in the Overall Project Schedule, Contractor shall, within seven days after receipt of written demand of the Owner, cause its employees and Subcontractors to perform work at an accelerated pace with hours and days in addition to the normal working hours and working days, as necessary to promptly bring the Work into compliance with the Overall Project Schedule. Fulfillment of this requirement as to overtime work shall not relieve the Contractor from liability for breach of the covenant as to time. For account of recovery of lost time required of the Contractor for its breach of covenant as to time, the Contractor shall be entitled to no claim against the Owner for any payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury or damages.

### **3.3.5 Construction Progress Schedule (Overall Project Schedule)**

**3.3.5.1 Submittal, Approval, and Updates.** Not later than sixty days after the Effective Date of the Contract, but prior to the Proceed Order, the Contractor must submit a Construction Progress Schedule in accordance with Section 2.1.5.

**3.3.5.2 Approval of Overall Project Schedule.** Upon recommendation by the Design Professional and approval by the Owner, the Construction Progress Schedule shall become the Overall Project Schedule, and becomes a part of this Contract. The Overall Project Schedule shall govern the schedule of activities of the Contractor under this Contract.

**3.3.5.3 Monthly Updates.** The Contractor must provide the Design Professional and the Owner with monthly updates of the Overall Project Schedule indicating completed activities and any changes in sequencing or activity durations. (See also Articles 2.1.2 and 2.1.5).

**3.3.6 Completion Date.** The Work under this Contract shall be completed by midnight of the date required in the Contract as the Material Completion and Occupancy Date unless extended by approved requests for extension of time.

**3.3.7 General Rule – No Damages for Delay, Extension of Time Sole Remedy.** Contractor shall not be entitled to any damages for delay or to any other reimbursement as a Cost of the Work, or to an increase in the contract amount, or to payment, damages, monies, or compensation of any kind from Owner for direct, indirect, impact, or disruption damages (including but not limited to costs of acceleration of Work or any Phase thereof) arising because of delay or other hindrance of any kind whatsoever; except as specifically permitted by Article 3.3.8. Extension of the time is the Contractor's sole remedy for any delays not the fault of the Contractor.

**3.3.8 Exception to General Rule – Compensable Delay.** The extension of the Contract Time and the adjustment to the Contract Sum specifically provided for in this Article shall be Contractor's sole and exclusive remedy for delays, hindrances, interferences or resulting inefficiencies and re-sequencing.

#### **3.3.8.1 Compensable Delay – Unavoidable Delay**

**3.3.8.1.1 Delay by Owner or Design Professional.** If the Contractor is delayed in the progress of the Work between the Proceed Order Date and the Material Completion and Occupancy Date, as amended, by an act or neglect of the Owner, Owner's employees, Design Professional or Separate Contractors employed by the Owner, or by other causes beyond the Contractor's control which the Design Professional determines are the fault of the Owner or the Design Professional and may justify delay, then the Contract Time will be extended by Change Order for such reasonable time as the Design Professional and the

Owner may determine; provided, however, that (i) such delays extend the Overall Project Schedule's critical path; (ii) the Contractor has taken all reasonable actions to mitigate the effects of the delay on the Work; (iii) the fault or negligence of the Contractor, the Contractor's agents or employees did not materially contribute to such causes; and (iv) the Contractor shall have notified Owner of the cause or causes of such delay within fourteen days from the date on which the Contractor first becomes aware of such delay.

**3.3.8.1.2 Delay in Responses to Submittals.** Any claim by Contractor for a change in the Material Completion and Occupancy Date due to delay of responses to submittals may be made during the time while the failure of the Design Professional to act or perform continues, or within seven days after such failure to act or perform has been cured. If no Submittal Schedule or agreement as required in Paragraph 2.2.3.1 is agreed upon, then a claim for delay will be allowed only after the Design Professional has been allowed fourteen days to take action. Any claim for extension of time must be reasonable and take into consideration the nature of the submittal.

**3.3.8.1.3 To be Processed as a Part of the Change Order Process.** Extensions of Time and compensation for Time Dependent Overhead Costs for Unavoidable Delay are to be processed as a Change Order pursuant to Article 3.2.6.

### **3.3.8.2 Compensable Delay – Certain Change Orders**

**3.3.8.2.1 Owner-Requested Changes.** If the Owner requests changes in the Contract Documents that would materially affect the completion of the Work by lengthening the critical path of the Overall Project Schedule, the Design Professional shall determine the appropriate number of days and thereby extend the Material Completion and Occupancy Date. The Contractor expressly agrees that the Contractor's sole monetary remedy for such extensions of Contract Time shall be calculated at the daily rate established for Time Dependent Overhead Costs in the Contract.

**3.3.8.2.2 Other Change Orders.** For Change Orders involving the following situations that would materially affect the completion of the Work by lengthening the critical path of the Construction Progress Schedule, the Design Professional shall determine the appropriate number of days and thereby extend the Material Completion and Occupancy Date. The Contractor expressly agrees that the Contractor's sole monetary remedy for such extensions of Contract Time shall be calculated at the daily rate established for Time Dependent Overhead Costs in the Contract.

- (a) Changes due to Subsurface or Other Unforeseen Conditions, Article 3.2.12.
- (b) Changes for Compensable Rock, Article 3.2.13.
- (c) Changes deleting work, Paragraph 3.2.10.4

**3.3.8.2.3 To be Processed as a Part of the Change Order Process.** Extensions of Time and compensation for Time Dependent Overhead Costs for all Change Orders are to be processed as a part of each Change Order pursuant to Article 3.2.6.

**3.3.8.3 Compensable Delay – Force Majeure.** If, between the Proceed Order Date and the Material Completion and Occupancy Date, as amended, the CM/GC is unable to perform or is delayed in the performance of any of the terms and provisions of this Contract, that materially affects the completion of the Work by lengthening the critical path of the Construction Progress Schedule, as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, acts of terror or terrorism or other civil disorder affecting performance of the Work; (iii) labor strikes that could not be reasonably anticipated, or (iv) earthquakes, or unusual and extreme weather conditions constituting Acts of God, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the critical path of the performance of the Work hereunder.

**3.3.8.3.1 Mitigation of Delay.** Contractor shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Owner in writing with a copy to the Design Professional of any event allowing for excuse or delay not later than seven days after the Contractor first becomes aware of the event, or should have become aware, of the event; otherwise Contractor will be deemed to have waived the excuse or delay.

3.3.8.3.2 To be Processed as a Part of the Change Order Process. Extensions of Time and compensation for Time Dependent Overhead Costs for Force Majeure are to be processed as a Change Order pursuant to Article 3.2.6.

3.3.8.4 Compensable Delay – Abnormal Weather. Extensions of time will be granted for abnormal inclement weather conditions that delay the critical path of the progress of the work.

3.3.8.4.1 Abnormal weather delay is defined as days lost to weather conditions either (i) in excess of days specified in the Supplementary General Conditions, or (ii) if not defined in the Supplementary General Conditions, as days in excess of a local historic average prevailing at the Site recorded by the National Oceanic and Atmospheric Administration (NOAA) for the 120 months immediately preceding the Proceed Order Date.

3.3.8.4.2 Not later than ten days after of the first occurrence of the event giving rise to the claim or with respect to claims for extension of time as a result of abnormal weather, and not later than ten days after the end of each calendar month thereafter, the Contractor shall file a claim with the Design Professional with a copy to the Owner. By not later than fifteen days from the receipt of the claim, the Design Professional shall render a decision concerning the allowance of an extension of time and shall report his decision to both the Contractor and the Owner.

3.3.8.4.3 Extensions of Time and compensation for Time Dependent Overhead Costs for Abnormal Weather are to be processed as a Change Order pursuant to Article 3.2.6.

3.5.8.5 Protest. The Design Professional's decision as to abnormal weather delay shall be subject to protest by either the Contractor or the Owner as set forth in Section 5, Part 2.

**3.3.9 Non-Compensable Delay.** Contractor understands, acknowledges and agrees that delays occasioned by the events and occurrences set forth below are not compensable delays and do not constitute reason for extending the Date for Material Completion and Occupancy. It is Contractor's responsibility to make adequate provision for the following in scheduling the Work:

3.3.9.1 Normal Weather Conditions. Weather conditions other than those that substantially vary from the normal climatology conditions that prevailed at the Site for the preceding 120 months, as evidenced by data published by the National Oceanic and Atmospheric Administration.

3.3.9.2 Delay in Delivery of Materials or Equipment. Delay in delivery of materials or equipment for any cause other than those specified in Paragraph 3.3.8.3. No claim will be approved if materials or equipment are delayed due to Contractor's tardy procurement or expediting.

3.3.9.3 All Other Delay. All delay not covered in Article 3.3.8.

**3.3.10 Submission of Claims for Compensable Delay and to Extend the Material Completion and Occupancy Date.**

3.3.10.1 Time for Submission. Except as specified below, any claim by Contractor for a change in the Contract Time or the Material Completion and Occupancy Date shall be made within fourteen days of the day on which the Contractor becomes aware of the event on which the claim is based or, if the Contract Documents specify a shorter or longer period with respect to such event, within the period specified by the Contract Documents.

3.3.10.2 Delay Claim Must Be in Writing. Any claim to extend the Contract Time and Material Completion and Occupancy Date must be in writing, must set forth in detail the basis for the claim and the number of days of delay claimed, must be correlated with the approved Overall Project Schedule, must be executed by the Contractor and delivered to the Design Professional and the Owner, and must be reviewed and an appropriate time assessed by the Design Professional.

3.3.10.3 When Delay Claim Deemed Waived. Any claim to extend the Contract Time and Material Completion and Occupancy Date not made in writing to Owner within the above time periods shall be deemed waived and shall not thereafter be valid. In the case of a continuing delay as a result of a single event, only one claim submission is necessary.

3.3.10.4 Design Professional to Decide. The Contract Time and the Material Completion and Occupancy Date may be extended for such reasonable time as the Design Professional may decide, and the Overall Project Schedule shall then be updated.

3.3.10.5 Payment for Extensions of Contract Time. The Contractor expressly agrees that the Contractor's sole monetary remedy for Compensable Delay shall be calculated at the daily rate established for the Time Dependent Overhead Costs in the Contract.

3.3.10.6 Claims Related to Extraordinary Time Dependent Overhead Cost. In situations where Time Dependent Overhead Costs are authorized, and the cost incurred exceeds 170% of the established Time Dependent Overhead Cost daily rate, then the Contractor may submit a claim under this article for consideration of such extraordinary additional cost.

### 3.3.11 Recovery of Schedule Delays

3.3.11.1 Recovery of Schedule Delays. If the Design Professional determines that the Project is one week or more behind schedule, per the approved Overall Project Schedule, the Design Professional shall so notify the Contractor in writing. Within seven days of the date of the Design Professional's notice, the Contractor shall deliver to the Design Professional and Owner a written plan explaining how the Contractor intends to bring the Project back on schedule. The Contractor's plan must provide sufficient detail to allow the Design Professional and Owner to determine the proposal's feasibility.

3.3.11.2 Recovery of Schedule Delays During Last Sixty Days of Contract Time. At any time during the last sixty days of the Contract Time that the Design Professional finds that the Contractor is behind schedule per the Contract Time, as amended, the Design Professional shall notify the Contractor in writing. Within seven days of the date of the Design Professional's notice, the Contractor shall prepare and deliver to the Design Professional and Owner a written plan explaining how the Contractor intends to bring the Project back on schedule. The Contractor's plan must provide sufficient detail to allow the Design Professional and Owner to determine the proposal's feasibility.

## PART 4 CORRECTING THE WORK, INSPECTIONS, COVERING AND UNCOVERING WORK

### 3.4.1 Correcting the Work

3.4.1.1 Notice of Non-Compliant Work. A Notice of Non-Compliant Work shall be in writing, shall be dated, shall be signed by the Design Professional, shall be addressed to the Contractor with a copy to the Owner, and shall contain three elements as follows:

3.4.1.1.1 Description of Work:

- (a) That has been omitted or
- (b) That is unexecuted as of the date of the Notice of Non-Compliant Work, the time for its incorporation into the work as planned in the Overall Project Schedule having expired, or
- (c) That has not been executed in accordance with the methods and materials designated in the Contract Documents.

3.4.1.1.2 Contract References: Citation of the provision or provisions of the Contract Documents which specify the Work to be executed.

3.4.1.1.3 Time for Compliance: Fixing of a reasonable space of time within which the Contractor shall have made good the deficiency (which said space of time shall not be deemed to be an extension of Contract Time) for filing the Notice of Readiness for Inspection for Material Completion pursuant to Article 6.3.2 nor shall it be deemed to be authorization for amendment to the Overall Project Schedule.

3.4.1.2 Failure to Supply Workmen or Materials or to Prosecute the Work. A Notice of Non-Compliant Work may be issued for failure of the Contractor to supply enough workers or enough materials or proper materials to prosecute the Work. A Notice of Non-Compliant Work in such event may be based on Article 3.3.2 (Competent Management of Time), and upon the definition of Work as set forth under Paragraph 1.1.9.58.

3.4.1.3 Removal and Making Good of Non-Compliant Work. The Contractor shall remove from the Site within the space of time designated in Notice of Non-Compliant Work all work determined by the Design Professional as failing to conform to the contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the Owner and shall

bear the expense of making good all work of other contractors destroyed by such removal or replacement. The Contractor shall supply any omitted work and perform all unexecuted work within the space of time fixed by the Design Professional in Notices of Non-Compliant Work.

#### **3.4.1.4 Remedy of the Owner for Breach of Notice of Non-Compliant Work.**

**3.4.1.4.1 Failure to Make Good a Deficiency.** If the Contractor does not make good a deficiency within a reasonable space of time fixed in a Notice of Non-Compliant Work, the Owner may do any of the following:

- (a) Remove the Non-Compliant Work and store it at the expense of the Contractor. If the Contractor does not pay the expenses of such removal and storing within ten days after receipt of written demand of the Owner, the Owner may upon three days' notice in writing to the Contractor sell such materials at private sale or at auction and shall account for the net proceeds thereof after deducting all proper costs incurred by the Owner.
- (b) Supply omitted work, perform unexecuted work, or replace and re-execute work not done in accordance with the methods and materials designated in the Contract Documents, and deduct the cost thereof from any payment then or thereafter due the Contractor. The Design Professional shall approve the amount charged to the Contractor.

**3.4.1.4.2 Other Remedies.** The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies. Time limits stated in Notices of Non-Compliant Work are of the essence of the contract. Unless otherwise agreed to by the Owner in writing, the making good of Non-Compliant work shall physically commence at the Site in not more than seven days after receipt of the Notice of Non-Compliant Work, except that in case of emergency correction shall physically commence at the Site at once, and except that the Contractor shall in any event physically commence the correction at the Site early enough to complete within the space of time allowed in the Notice of Non-Compliant Work. The Owner shall give prompt consideration to reasonable requests for delay in commencement of the making good of Notices of Non-Compliant Work. The making good of Non-Compliant work shall be completed within the space of time allowed in the Notice of Non-Compliant Work unless the Contractor shall have requested from the Design Professional an increase in the amount of time allowed and the Design Professional shall have given notice to the Contractor in writing, with copy to the Owner, stating the additional amount of time, if any, allowed.

**3.4.1.5 Notice of Correction from Contractor.** The Contractor shall give prompt notice in writing to the Design Professional, with copy to the Owner, upon completion of the correction of the Non-Compliant work. In the absence of such notice, it shall be and is presumed under this Contract that there has been no correction, supplying remedy, or performance of unexecuted work.

**3.4.1.6 The Owner's Right to Correct Work.** If the Contractor should neglect to prosecute the Work properly or fail to correct Non-Compliant Work or fail to perform any provision of this Contract, the Owner, after three days' written notice to the Contractor, may without prejudice to any other remedy he may have (including without limitation remedies against the Contractor's surety), make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

#### **3.4.2 Inspections**

**3.4.2.1 Access to Work.** The Design Professional, the Owner, and their representatives shall have access at all times to the work wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for inspection.

**3.4.2.2 Notice of Readiness for Inspection to Design Professional from Contractor Prior to Covering Work.** If the specifications, the Design Professional's instructions (either in the specifications or issued later in writing), laws, ordinances or any public authority require any work to be specially tested or approved, the Contractor shall give the Design Professional timely notice in writing of its readiness for inspection. If the inspection is by any authority other than the Design Professional, the Contractor shall give timely notice of the date fixed for such inspection. Inspections by the Design Professional shall be made promptly and, where practicable, at the source of supply.

#### **3.4.2.3 Fire Marshal Inspections.**

**3.4.2.3.1 General.** The State Fire Marshal may make inspections at any time. It shall be the responsibility of the Contractor to request an inspection at eighty percent completion and at 100% completion and to

give notice when all items on the 100% inspection report have been completed. Requests shall be in writing with a copy to the Owner and Design Professional.

**3.4.2.3.2 Inspections Defined.** The basic definitions for eighty percent and 100% inspections are as follows:

- (a) **Eighty Percent Inspection:** The structural components are in place and open for review of the fire safety components. NOTE: Structural components include the following: fire walls, vertical shafts, stairways, smoke stops, hazardous area separation, roof and ceiling assemblies, corridor and door width, and HVAC system.
- (b) **100% Inspection:** The Contractor has completed all of the items on the eighty percent inspection report and has the certificate of occupancy in hand.

**3.4.2.4 False Start.** In the event the Contractor shall have issued notice of readiness prematurely, his action shall be deemed to be a "false start." The Contractor shall be liable for the damage resulting from the aforesaid false start, including, but not limited to, the salary, professional fees, and travel and living expenses of the person or parties inconvenienced by the aforesaid false start.

**3.4.2.5 Certificate of Occupancy.** The Contractor's obligation under the Contract is to install the Work in accordance with the Contract Documents, obtain the Certificate of Occupancy from the State Fire Marshal or his deputy, and forward it to the Design Professional as a part of the final close out procedures. The Design Professional's obligation is to design the Work to comply with the applicable codes and to qualify for a Certificate of Occupancy.

### **3.4.3 Covering and Uncovering Work**

**3.4.3.1 Re-examination or Re-testing of Work Covered Pursuant to Consent of Design Professional.** Re-examination or re-testing of questioned Work previously covered pursuant to consent of the Design Professional may be ordered by the Design Professional. If so ordered the Work must be uncovered by the Contractor. The Owner shall pay the cost of re-examination and replacement or of re-testing if such Work is found in accordance with the Contract Documents. The Contractor shall pay such cost if such Work is found not in accordance with the Contract Documents unless the Contractor can show that a Separate Contractor caused the defect in the Work. In that event, the Owner shall pay such cost. Re-examination or re-testing under the terms of this Paragraph applies only to Work that has been covered with consent of the Design Professional. Work covered without consent of the Design Professional must be uncovered for examination as provided below.

**3.4.3.2 Re-examination or Re-testing of Work Covered Without Consent of Design Professional.** If any Work should be covered without approval or consent of the Design Professional or contrary to any provision of the Contract Documents, such Work must be uncovered for examination by the Design Professional at the Contractor's expense. The Contractor shall be liable for the costs resulting from the aforesaid uncovering, including, but not limited to, the salary, professional fees, and travel and living expenses of the person or parties inconvenienced thereby.

**3.4.4 Inspection Does Not Relieve Contractor.** Under the Contract Documents, the Contractor acknowledges that it has the responsibility for furnishing all services, labor, supplies, and materials for the entire Work in accordance with such documents. No provisions of this article nor any inspection of the Work by the Owner, representatives of the Owner, the Using Agency, Contract Compliance Specialist, clerk-of-the-works, engineers employed by the Design Professional, representatives of the Design Professional, or the Design Professional shall in any way diminish, relieve, or alter said responsibility and undertaking of the Contractor. Neither shall the omission of any of the foregoing to discover or to bring to the attention of the Contractor the existence of any Work or materials injured or done not in accordance with said Contract Documents in any way diminish, relieve, or alter such obligation of the Contractor nor shall the aforesaid omission diminish or alter the rights or remedies of the Owner as set forth in the Contract Documents. The Contract Compliance Specialist has no power to make decisions, to accept or reject work, or to consent to the covering of Work. The Contract Compliance Specialist owes no duty to the Contractor.

## **PART 5 SUBCONTRACTORS, TRADE CONTRACTORS, AND SUPPLIERS**

### **3.5.1 Subcontractors, Trade Contractors, and Suppliers**

**3.5.1.1 Submission of List.** Within fourteen days of the Effective Date of the Contract, the Contractor shall submit in writing to the Design Professional a list of the names of Subcontractors that the Contractor intends to employ on the Work. The list of Subcontractors is not submitted for approval but is for the purpose of establishing the following:

3.5.1.1.1 What trades and portions of the work are to be performed under subcontract, and.

3.5.1.1.2 The names of the parties selected by the Contractor to perform work by subcontract, the aforesaid selection being a matter lying solely within the discretion of the Contractor.

3.5.1.1.3 The Contractor shall identify each minority owned and each female owned Trade Contractor and Subcontractor or Supplier performing work on or supplying material to the project.

3.5.1.1.4 By not later than the tenth day of the month following the end of each quarter the Contractor shall submit to the owner a list of all minority and female owned Subcontractors, Trade Contractors, or Supplier performing work on or supplying material to the Project and the amount paid to each for that quarter.

3.5.1.2 No Approval of Subcontractors, Trade Contractors, and Suppliers. Neither the Owner nor the Design Professional undertakes to pass upon or approve any Subcontractor, Trade Contractor, or supplier.

**3.5.2 Representation of Contractor.** The Contractor represents that the Subcontractors, Suppliers, and Trade Contractors selected by it are reputable, skilled, reliable, competent, qualified in the trade or field in which they are to perform on the Project, and thoroughly familiar with the codes and laws applicable to their work.

**3.5.3 Contractor Responsible for Acts and Omissions.** The Contractor agrees that he is as fully responsible for the acts and omissions of his Subcontractors, Trade Contractors, Suppliers, and employees, and further of all persons directly or indirectly employed by them, as the Contractor is for the acts and omissions of employees and persons directly employed by the Contractor. The failure of a Subcontractor, Trade Contractor, supplier, or employee to perform shall not be asserted by the Contractor as an excuse for any omission from or noncompliance with requirements of the Contract Documents; nor shall the Contractor be entitled to an extension of time solely because of failure of a Subcontractor, Trade Contractor, supplier, or employee to perform. The subcontracting of work does not relieve the Contractor of the responsibility for the execution of the work and for compliance with all requirements of the Contract Documents. The Contractor shall not assert negligence, inefficiency, insolvency, bankruptcy, or incompetence of any Subcontractor, Trade Contractor, supplier, or employee as excuse for the existence of any noncompliance with or omission to fulfill any obligation under the Contract either as to timely performance or as to compliance with methods and materials designated in the Contract Documents; nor shall the Contractor assert nonperformance of a Subcontractor, Trade Contractor, supplier, or employee as excuse for the existence of any noncompliance with or omission to fulfill any obligation under the Contract. As to Subcontractor, Trade Contractor, supplier, and employees of the Contractor, the doctrine that a principal is liable for the acts and omissions of his agent shall be binding on the Contractor in his relationship to the Owner, and the Contractor may not reverse the aforesaid doctrine by contract or legal mechanism.

**3.5.4 No Contract between Owner and Any Subcontractor, Trade Contractor, Supplier, or Employee.** Nothing contained in the Contract Documents shall create any contractual relation between the Owner and any Subcontractor, Trade Contractor, Supplier, or employee of the Contractor or its Subcontractors.

**3.5.5 Relationship of Contractor with Subcontractors, Trade Contractors, and Suppliers.**

3.5.5.1 Obligations of Each. The Contractor agrees to bind every Subcontractor, Trade Contractor, Supplier (hereinafter collectively referred to as "Subordinate Contractor") to the terms of the Contract Documents insofar as they are applicable to its work, including the following provisions of this Article:

3.5.5.1.1 The Contractor Agrees:

- (a) To be bound to the Subordinate Contractor by all the obligations that the Owner owes to the Contractor under the Contract Documents.
- (b) To pay the Subordinate Contractor upon the payment of certificates issued under the schedule of values described in the General Conditions the amount allowed to the Contractor on account of the Subordinate Contractor's work to the extent of the Subordinate Contractor's interest therein within seven days of receipt of payment from the Owner; provided, however, that retainage shall be released to the Subordinate Contractor as provided by law and in accordance with the statutory affidavit set forth in Section 7, Forms.
- (c) To pay the Subordinate Contractor upon the payment of certificates issued otherwise than the schedule of values such manner that at all times the Subordinate Contractor's total payments shall be as large in proportion to the value of the work done by the

Subordinate Contractor as the total amount certified and paid to the Contractor is to the value of the work done by the Subordinate Contractor.

(d) To pay the Subordinate Contractor a just share of any property insurance money received by the Contractor and due to Subordinate Contractor for work performed by Subordinate and paid for by insurance.

(e) That no claim for services rendered or materials supplied or other matters by the Contractor against the Subordinate Contractor shall be valid unless written notice thereof is given by the Contractor to the Subordinate Contractor prior to or during the first ten days of the calendar month following that in which the Contractor determines that the claim is chargeable against that Subordinate Contractor.

(f) To give the Subordinate Contractor, upon its request, an opportunity to be present with Contractor and to submit evidence in any dispute involving rights of the Subordinate Contractor.

**3.5.5.1.2** The Contractor Agrees to require its Subcontractors to do the following:

(a) To be bound to the Contractor by the terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities that the Contractor by the aforesaid documents assumes toward the Owner.

(b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under these General Conditions.

(c) To make all claims for extras, for extensions of time or for damages to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making such claims to the Contractor is within ten days after the initial event leading to the claim.

(d) To pay their Subordinate Contractors upon the payment of certificates issued under the schedule of values described in the General Conditions the amount allowed on account of such Subordinate Contractor's work to the extent of such Subordinate Contractor's interest therein within seven days of its receipt of payment; provided, however, that retainage shall be released as provided by law and in accordance with the statutory affidavit set forth in Section 7, Forms.

(e) To pay their Subordinate Contractors upon Subcontractor's receipt of payment such that at all times their Subordinate Contractors' aggregate payments shall be in proportion to the Work performed by each of the Subordinate Contractors.

**3.5.5.2** Owner Not Obligated to Any Subcontractor, Subordinate Contractor, Trade Contractor, or Supplier. There is no obligation on the part of the Owner to pay to or to see to the payment of any sums to any Subcontractor, Subordinate Contractor, Trade Contractor, Supplier, laborer, employee, or person supplying labor, materials, machinery or equipment to the Project.

**3.5.5.3** Term "Substantial Completion" Deleted. The term "substantial completion," if found, is hereby deleted and is of no force in all Subcontracts, Trade Contracts, and in the Trade Sections of the Contract Documents. In certain contexts, the term may be superseded by the term "Material Completion" as defined in this Contract.

**3.5.5.4** Failure to Incorporate Terms in Subcontracts. The Contractor agrees that failure on his part to incorporate this Article 3.5.5 in all Subcontracts, Trade Contracts, or Supplier contracts, is a material breach of an essential covenant of this Contract, and further agrees that in the event of such breach the Contractor shall, within five days after demand of the Owner, furnish proof in writing that the deficiency has been remedied to the end that (1) the Contractor may not maintain that it is beyond his competence to require performance of terms of the contract by a subcontractor and (2) no subcontractor may maintain that he has not assumed toward the Contractor all the obligations and responsibilities that the Contractor has assumed toward the Owner. Failure on the part of the Contractor to effect remedy as above within five days after receipt of written demand of the Owner shall be grounds for issuance of a declaration of default by the Owner.

## SECTION 4 – COMPENSATION

### PART 1 GENERAL

**4.1.1 Payments.** The Owner will make progress payments to the Contractor in accordance with Section 4 of the General Conditions. Final Payment will be made in accordance with Section 6 of the General Conditions. The date and amount of payment are subject to Section 4, Part 2. Sums retained by the Owner remain the property of the Owner until

such time as the Contractor shall have become entitled to receive such payment pursuant to Section 6 of the General Conditions by furnishing the remainder of the Work and services required by the Contract Documents.

#### **4.1.2 Application for Payments**

**4.1.2.1 Form of Application.** The Contractor shall periodically submit to the Design Professional an Application for Payment on the form set forth in Section 7 (sometimes called a "Periodical Estimate") for each payment requested, and, if requested by the Owner or Design Professional, shall attach backup materials including, but not limited to, receipts or other vouchers, showing his payments for materials and labor, including payments previously made to Subcontractors.

**4.1.2.2 Initial Breakdown and Periodical Payments.** Each Application for Payment shall be submitted at least ten days before each payment falls due, and the Contractor shall, before the first application, shall submit to the Design Professional a Schedule of Values of the various parts of the work, including quantities, aggregating the total sum of the Contract, divided in the same manner set forth in the Application for Payment Form set forth in Section 7 showing the Contractor's right to the payment claimed and so arranged and so itemized as to meet the approval of the Design Professional and, further, if requested, supported by such evidence as to its correctness as the Design Professional may direct.

**4.1.2.3 Materials Stored.** If the Payment Application includes stored materials, payment shall be conditioned upon submission of bills of sale or other documents to establish Owner's / Using Agencies title to such materials, adherence to Owner's procedures to adequately protect Owner's / Using Agencies interest, and execution of an agreement for storing materials off-site if the Payment Application includes request for payment for off-site stored materials. Contractor is responsible for the existence, protection, and, if necessary, replacement of materials at least until execution of the Final Certificate of Design Professional.

**4.1.2.3.1 Costs of Materials Stored on Site.** Trade Contractor Costs include the costs of all materials properly stored on the Project Site prior to their incorporation in the Work.

**4.1.2.3.2 Costs of Materials Stored Off-Site with Owner Approval.** If approved in writing by Owner / Using Agency prior to the issuance of the GMP, pursuant to an agreement for storing materials off-site executed by GMP execution, or later. Trade Contractor Costs include the costs of materials stored off the Project Site. Owner / Using Agency will allow for payment of materials stored off the Project Site only if there is a long lead time for such materials and only if there is insufficient space on the Project Site for storing such materials or the off-site facility is a more secure and suitable location for storing such materials. Off-Site Stored Materials Agreement is required if the Work includes any materials that will be stored off-site (see SECTION 7 – CONTRACT FORMS).

**4.1.2.4 Retainage.** Retainage shall be withheld from each periodic payment to the Contractor in the amount of five percent of the sum of the total amount earned for work-in-place (original Contract), total amount earned for work-in-place (Change Orders), and Value of Materials stored On Site or Off Site with Owner's prior approval.

**4.1.2.5 Subcontractor's Retainage Release.** At the discretion of the Owner and request by Contractor, an amount equal to the subcontract retainage of a Subcontractor may be separately released from the retainage held by the Owner as he completes his work. An application in accordance with the Owner's specimen (See Section 7, Forms) for release of a Subcontractor's retainage shall contain a release of all claims by the Subcontractor and shall bear the original certificates of the Subcontractor, the Contractor, and the Design Professional that the Subcontractor's work has been fully performed and that the sum for which payment is requested is due by the Contractor to the Subcontractor. Checks releasing a Subcontractor's retainage shall be made payable to the Contractor, the Contractor's surety, and the Subcontractor and shall be mailed to the Contractor's surety. This article does not create any contractual relationship between the Owner and the Subcontractor or any duty of the Owner to any Subcontractor.

**4.1.2.6 Accounting Format.** Applications for Payment shall be broken down by CSI Category and, in certain situations, by CSI Description and capital asset category, as set forth in the form for Application for Payment. The purpose is to provide appropriate backup documents for the Contractor's Final Certification of Costs in conformance with GASB 34 accounting standards. See Section 7 – Forms, "Application for Payment" and Final Certification of Costs.

**4.1.3 Processing of Application for Payment (Periodical Estimates).** The Contract Compliance Specialist (CCS) will review the Application for Payment prepared and executed by the Contractor and, if he concurs, execute a certificate on the face of the Application for Payment as to its accuracy. The Design Professional shall visit the Site after the Contractor and CCS have agreed on the Application for Payment and conduct such inspections and reviews as are necessary to make a decision as to the accuracy of the Application for Payment. If the CCS and the Contractor cannot agree on the appropriateness of the Application for Payment in question, the Design Professional shall make a decision. Upon determining the appropriateness of the Application, the Design Professional shall execute the certificate on the Application for Payment and forward it to the Owner for payment. Not later than seven days after receipt of the Application for Payment, the Design Professional shall issue its certificate for such amount as it decides to be properly due or state in writing its reasons for withholding any sums in its certificate.

**4.1.4 Effect of Design Professional's Certificate on an Application for Payment.** No certificate issued by the Design Professional, nor payment made to the Contractor by the Owner, or partial or entire use or occupancy of the Work by the Owner shall be an acceptance of any work or materials not in accordance with the Contract Documents.

**4.1.5 Payment Due.** Payment of an Application for Payment shall be due ten days after receipt by the Owner of the certification of the Application for Payment by the Design Professional.

**4.1.6 Payment Due Dates and Interest.** Should the Owner fail to pay a proper invoice within thirty calendar days of receipt, the Contractor shall notify the Owner in writing by certified or statutory mail. If the Owner fails to pay within five business days of receipt of the notice, the Contractor shall receive, in addition to the sum named in the proper invoice, interest thereon at the rate of one-half percent per month on the unpaid balance as may be due.

**4.1.7 Payments for Change Order Work.** Payments will not be made for any changes in the Work until a Change Order has been executed.

## PART 2 PAYMENTS WITHHELD

### 4.2.1 Payments Withheld

4.2.1.1 Payments Withheld or Nullified. The Design Professional or the Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the Owner from loss because of the following conditions:

- (a) Defective work not remedied.
- (b) Claims or liens filed.
- (c) Failure of the Contractor to make payments properly to Subcontractor or Supplier for materials or labor.
- (d) A reasonable doubt that the Contract can be completed for the balance then unpaid.
- (e) Damage to a Separate Contractor or to the Owner or a third party.
- (f) Failure to maintain a rate of progress consistent with the Milestones.
- (g) Failure to supply enough skilled workers or proper materials.
- (h) Court-ordered retention.
- (i) State Tax Forms not on file.
- (j) Breach of this Contract.

4.2.1.2 Withheld Payments Restored. When the conditions above are remedied, payment shall be made for amounts withheld because of them.

## PART 3 LIENS

**4.3.1 Public Property Not Subject to Lien.** The Contractor acknowledges that, pursuant to law, the Site is public property of the State of Georgia and is not subject to lien or levy. The Contractor will notify the Owner of any liens or levies against the Site of which it becomes aware. The Contractor shall cooperate with the Owner and shall use its best efforts to assist in securing the release of any liens or levies of which it becomes aware.

**4.3.2 Notice of Commencement.** A Notice of Commencement shall be filed by the Contractor with the Clerk of the Superior Court in the county in which the Project is located, pursuant to O.C.G.A. §13-10-62.

**4.3.3 Release of Liens.** Neither any part of the retainage nor the Final Payment shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens or conditional release of lien upon payment or claims arising out of this contract in accordance with the Owner's specimen form (a copy of which will be provided to any bidder on request), or receipts in full in place thereof and, if required in either case, an affidavit that so far as he has knowledge

or information the releases and receipts include all labor and materials for which a lien or claim could be filed; but the Contractor may, if any Subcontractor or claimant refuses to provide a release, furnish a bond satisfactory to the Owner to indemnify the Owner against any lien or claim. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

## SECTION 5 – CONTRACT ADJUSTMENTS, DISPUTES, AND TERMINATION

### PART 1 OWNER'S RIGHT TO SUSPEND OR STOP WORK

**5.1.1 Owner's Right to Suspend Work.** The Owner reserves the right, with or without the concurrence of the Design Professional, to suspend the Work at any time or from time to time at the Owner's sole discretion, upon giving Contractor five days advanced written notice thereof. If the Owner exercises this right and then resumes the Work covered hereby, Contractor shall be entitled upon timely claim to a Change Order for payment by Owner of any reasonable Actual Costs actually incurred by Contractor in connection with the suspension and resumption of the Work, as well as an extension in the time for performance of the Work to the extent Contractor is delayed by Owner's suspension, to include compensation based upon the rate for Time Dependent Overhead Costs. The Design Professional shall determine the time, which shall be binding upon both Owner and Contractor, as set forth in Section 3, Part 3.

**5.1.2 Owner's Right to Stop Work.** The Owner reserves the right, for itself and for any designated Construction Inspector retained by Owner, upon observation of apparent nonconforming Work, to immediately stop the affected Work. If the Work is later determined by the Design Professional to be in fact conforming Work, then Contractor shall be entitled upon timely claim to a Change Order for payment by Owner of any reasonable Actual Costs actually incurred by Contractor in connection with the stop Work order and resumption of the Work, as well as an extension in the time for performance of the Work to the extent Contractor is delayed by Owner's stop Work order. The Design Professional shall determine the time, which shall be binding upon both Owner and Contractor, as set forth in Section 3, Part 3.

**5.1.3 Owner's Rights Independent from Rights and Duty of the Design Professional.** The rights granted to Owner under this Article are independent of the duty and obligation of the Design Professional to stop the Work for non-compliant work or to issue Notices of Non-Compliant Work.

### PART 2 CONTRACT ADJUSTMENTS AND DISPUTES

#### 5.2.1 General Provisions

5.2.1.1 No Arbitration. There is no agreement to arbitrate any dispute arising under the Contract Documents. Any and all references to arbitration in any of the Contract Documents, including without limitation any exhibits, attachments or references, are hereby deleted and rendered null and void.

5.2.1.2 Continuation of the Work. Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under any Contract Documents or Contracts, the Contractor must carry on with the performance of its contract services and the Work, including all duties and obligations hereunder, during the pendency of any Claim, dispute, and other matter in question or during any alternative dispute resolution proceeding, court proceeding, or other proceeding to resolve any Claim, dispute, and other matter in question, and the Owner will continue to make payments in accordance with the Contract Documents. The Owner, however, is under no obligation to make payments on or against such Claims, disputes, and other matters in question during the time required to resolve such Claims, disputes, and other matters in question.

#### 5.2.2 General Claims for Contract Adjustments and Disputes

5.2.2.1 General Claims of the Contractor. Should the Contractor suffer any injury or damage to person or property that Contractor reasonably believes a legal basis exists for liability on the part of the Owner, Program manager, or Design Professional, and that should result in an adjustment in the Cost of the Work or the Contract Time, such claim shall be made in writing in the form of a Request for Change Order to the Design Professional and copy the owner within fourteen days after such injury or damage is or has been observed. Any and all claims not made within said fourteen days are barred, waived, released, and discharged. The decision of the Design Professional is final and binding on the Contractor unless the Contractor protests the decision of the Design Professional and files a Statement of General Claim as set forth below.

**5.2.2.2 Processing of General Claims.** All claims must be filed and processed as a request for Change Order and subject to the processes and limitations set forth in Section 3 Part 2. If the requested Change Order is rejected, a protest may be made as set forth in Paragraph 5.2.2.3 below.

**5.2.2.3 Protest; Statement of General Claim; Time of Submission.** No protest of a claim decision of the Design Professional by the Contractor, whether said claim shall be accrued or prospective, shall be valid unless a "Statement of Claim" in writing and accompanied by vouchers and other supporting data shall have been filed with the Owner's Representative, or if there is no Owner's Representative, with the Owner by the Contractor not later than thirty days after the Design Professional's decision to reject the claim, time being of the essence. The "Statement of Claim" shall contain a concise and clear recital of the grounds and the legal basis upon which the claim is asserted, including a designation of the applicable provisions of the Contract Documents. The Statement of Claim shall indicate the dollar amount of the claim and the number of days of adjustment of the Contract Time. The Owner and Contractor shall endeavor to resolve the dispute in accordance with Article 5.2.3 below.

**5.2.2.4 Claims by Subcontractors.** No claim or protest shall be made by the Contractor solely on the ground that a Subcontractor, Supplier, or Trade Contractor has made a claim or protest against the Contractor. The Contractor must maintain its claim or protest against the Owner based upon the provisions of the Contract Documents and independent of any right the Subcontractor, Supplier, or Trade Contractor has against the Contractor. The Contractor shall defend the Owner from any claims or protests submitted by a Subcontractor, Supplier, or Trade Contractor asserted in violation of, or contrary to any provision of the Contract Documents.

### **5.2.3 Dispute Resolution**

**5.2.3.1 Initial Dispute Resolution.** If a dispute arises out of or relates to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the parties' representatives who have the authority to settle the dispute. If the parties' representatives are not able to promptly settle the dispute, they shall refer the dispute to the senior administrators of the parties who have the authority to settle the dispute, who shall meet within fourteen days thereafter. If the dispute is not settled by the senior administrators, the parties may submit the dispute to mediation in accordance with Paragraph 5.2.3.2.

**5.2.3.2 Mediation.** If the dispute cannot be settled pursuant to Paragraph 5.2.3.1, the parties may elect to submit the dispute to mediation. The parties agree to conclude such mediation within sixty days of electing mediation. The parties shall select a mutually agreeable mediator and shall share the cost of the mediator equally. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be communicated directly by the party's representative to the other party's representative and the mediator.

**5.2.3.3 Multiparty Proceeding.** All parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding and shall share the costs equally. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of such dispute resolution procedures.

**5.2.3.4 No Litigation.** No litigation may be commenced without first following the process in this Article. Action may be filed in the Superior Court in Fulton County, Georgia, pursuant to OCGA §50-21-1, after the filing party provides thirty days written notice to the opposing party.

### **5.2.4 Certain Claims Excluded from General Claims**

**5.2.4.1** All claims for Compensable Delay under Article 3.3.8.

**5.2.4.2** All claims for changes to the Work under Article 3.2.12, Article 3.2.13, Article 3.2.14, and Article 3.2.16.

## **PART 3 TERMINATION**

### **5.3.1 Owner's Right to Terminate Contract for Convenience**

**5.3.1.1 Termination for Convenience.** The Owner may at any time, and for any reason or without any reason or cause, terminate this Contract by written notice to the Contractor specifying the termination date, without cause and irrespective of whether or not Contractor is in default of any of its obligations hereunder. The effective date of termination shall not be earlier than seven days from the date of confirmed receipt of the written notice.

**5.3.1.1.1** The Contractor shall: (i) stop the Services or the Work (as applicable); (ii) place no further orders or Subcontracts for materials, labor, services or equipment; and (iii) terminate all material and equipment orders and Subcontracts to the extent terminable (unless otherwise directed by Owner in writing) and

advise Owner of all materials, equipment and other items which cannot be canceled or which are already delivered and allow Owner to participate in the salvage or disposition thereof.

5.3.1.1.2 If Owner terminates this Contract pursuant to this Section prior to the commencement of the Construction Stage, Contractor shall, as soon as practical after receiving notice of termination under Section 5.3.1.1, submit to Owner an Application for Payment for all services performed through the date of receipt of the notice of termination, for which payment has not been previously made pursuant to the terms of this Contract.

5.3.1.1.3 If Owner terminates this Contract pursuant to this Section after commencement of the Construction Stage, Contractor shall, as soon as practical after receiving notice of termination under Section 5.3.1.1, submit to Owner an Application for Payment showing all of the costs incurred by Contractor in the performance of the Work terminated through the date of receipt of the notice of termination. The phrase "costs incurred by Contractor in the performance of the Work terminated" as used herein shall be deemed to include:

- (i) Subcontract costs of Work completed;
- (ii) Cancellation fees in regard to equipment and materials ordered;
- (iii) Cost of all materials and equipment ordered which cannot be cancelled; less actual proceeds received upon the disposition thereof;
- (iv) Field Work accomplished;
- (v) Permit, engineering, bond and inspection fees;
- (vi) All other direct costs actually incurred by Contractor that can be demonstrated by invoice, canceled check, or other appropriate documentation;
- (vii) General Conditions costs and profit incurred through the date of termination.
- (viii) Job Site and termination costs for ten business days after the date of termination to be paid at the daily rate Time Dependent Overhead Costs.

5.3.1.2 Acceptance of payment by the Contractor shall constitute a waiver of all further claims by Contractor against Owner under the Contract, and shall be Contractor's exclusive remedy for termination of the Contract. Notwithstanding anything to the contrary contained in the Contract Documents, in no event shall Contractor be entitled to any payment on account of accident or lost profits or consequential damages in connection with any termination of the Contract, or otherwise in connection with the Contract.

5.3.1.3 Condition Precedent to Payment. As a condition precedent to receiving the payment set forth in this Article 5.3.1, Contractor shall deliver to the Owner all papers, documents, assignments and agreements relating to the Project, in particular the Contract Documents (including ownership and copyright thereof) as set forth in Article 1.1.7, Paragraphs 1.1.9.17 and 2.2.1.8.

**5.3.1.4 Assignment of Rights, Trade, and Subcontracts.**

5.3.1.4.1 Assignment. If requested, Contractor shall assign to the Owner or to an entity of Owner's choice any or all of Contractor's contractual rights in respect thereof, so that the assignee shall be fully vested with all rights and benefits of Contractor under such papers, documents and agreements, together with releases and waivers of lien in the same manner as would be required upon Final Completion. The Owner may also request the assignment from Contractor to Owner or to the entity of Owner's choice of any or all Subcontractors and supplier agreements entered into by Contractor and in that event the assignee shall be solely obligated to the Subcontractors and Suppliers under such contracts or agreements for all sums payable thereunder and not previously paid by the Owner to Contractor.

5.3.1.4.2 Cessation of Entitlement. Upon the Contractor's assignment of agreements, contracts, Trade Contracts and/or Owner's payment of monies due Contractor as provided in Subparagraph 5.3.1.4.1 above, Contractor shall be entitled to no further compensation of any kind from Owner and shall have no further obligation with regard to the assigned agreements, contracts, Subcontractors or Supplier.

**5.3.2 Owner's Right to Declare Default and/or Terminate Contract for Cause**

5.3.2.1 Termination for Cause. In the event that any provisions of this Contract are violated by the Contractor, through its own forces or by any of its subcontractors, the Owner may serve written notice upon the Contractor and the surety of the Owner's intention to declare default and terminate the Contractor. Unless within ten days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the Contractor shall, upon the expiration of said ten days, be in default. Such notices shall outline the reasons for such intention to terminate the contract. In the event of any such default, the

Owner shall immediately serve notice thereof upon the surety and the Contractor, and the Owner shall demand that the surety perform in accordance with its bond. If the surety fails to exercise its election under the bond or does not commence performance thereof within the time required by the bond, the Owner may take over the Work and prosecute the same to completion for the account of and at the expense of the Contractor. The Contractor and its surety shall be liable to the Owner for any excess cost to the Owner. The Owner may take possession of and utilize in completing the Work such materials, appliances, and plant as may be on the Site and necessary thereto.

**5.3.2.2 Grounds for Issuance of Notice of Declaration of Default.** It shall be a sufficient ground for the issuance of a notice of declaration of default that the Contractor has been unfaithful or delinquent in the performance of the Contract or any part of it in any respect. The Design Professional does not have authority to declare the Contractor in default.

**5.3.2.2.1 Non-Compliant Work.** Without limitation of the foregoing and without subtracting from any right or defense of the Owner under other provisions of the Contract Documents, the Contractor acknowledges and agrees that it is grounds for issuance of a notice of declaration of default under the performance bond if the Contractor shall have neglected or failed for any reason to remedy a breach of a Notice of Non-Compliant Work within thirty days after the Owner shall have given written notice of said breach to the Contractor.

**5.3.2.2.2 Failure to Prosecute the Work.** If the Contractor refuses or fails, except in cases for which extensions of time are provided, to supply enough properly skilled workmen or proper materials, or if it fails to make proper payment to Subcontractors for materials or labor, or if it fails to diligently prosecute the Work in accordance with the Contract Documents, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and its Surety, after ten days' written notice of the Owner's Intent to Declare Default, during which period the Contractor fails to cure or fails to commence and thereafter diligently prosecute Work necessary to cure the violation, declare the Contractor to be in default.

**5.3.2.2.3 Other Failures of the Contractor.** If Contractor, without limitation, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project, or if it otherwise is guilty of a violation of any provision of this Contract, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and its Surety, if any, ten days' written notice of the Owner's Intent to Declare Default, during which period the Contractor fails to cure or fails to commence and thereafter diligently prosecute Work necessary to cure the violation, declare the Contractor to be in default.

**5.3.2.3 Owner's Right to Prosecute the Work.** Time being of the essence, if the Contractor shall be declared in default, both the Contractor and the Surety agree that the Owner may, after giving the Contractor and Surety the required notice and time under the bond if any is required, without prejudice to any other remedy and without invalidating the performance bond, make good such deficiencies and may deduct the cost thereof from payment due the Contractor or, at the Owner's option and without prejudice to the Owner's rights against the Contractor and Surety, the Owner may terminate the Contractor and take possession of the Site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor and finish the Work by whatever method the Owner shall deem expedient.

**5.3.2.4 Effect of Later Determination.** In the event the parties agree or a court of competent jurisdiction determines (or the parties agree to settle with a consent determination) that a default is wrongful or not the fault of the Contractor, the termination shall be considered to be a Termination for Convenience and the sole remedy available to the Contractor shall be the contractual treatment of the termination pursuant to Article 5.3.1 above and without any other damages or relief.

### **5.3.3 Contractor's Right to Terminate**

**5.3.3.1 Contractor's Right to Stop Work.** The Contractor may, upon seven days written notice to the Owner and the Design Professional, stop Work without penalty for the following reasons:

**5.3.3.1.1 Order of Court or Superior Public Authority.** If any court or other superior public authority issues an order that affects the Work and the order results from no act or fault of the Contractor, the Contractor may stop the affected Work. In addition, the Contractor may stop Work as a result of an act of government, such as a declaration of a national emergency, making critical materials unavailable.

5.3.3.1.2 Failure to issue Certificate of Payment. Work may be stopped if the Design Professional should fail to certify any Application for Payment within fourteen days after said certification is due from the Design Professional. This ground terminates upon any payment of the Application for Payment by the Owner.

5.3.3.2 Contractor's Right to Terminate Contract.

5.3.3.2.1 Contractor's Right to Terminate for Nonpayment. If the Owner fails to pay the Contractor when payment is due, the Contractor must give written notice of the Contractor's intention to terminate this Contract. If the Owner fails to provide the Contractor payment or written notice of a dispute as to the amount sought by the Contractor within thirty days after receipt of the Contractor's written notice, the Contractor may terminate this Contract. Upon such termination the Owner will pay the Contractor for the Work properly executed to date, and, upon timely claim therefore, for any proven loss sustained or cost incurred upon any materials, equipment, tools, construction equipment and machinery, and cancellation charges on existing obligations of the Contractor.

5.3.3.2.2 Contractor's Right to Terminate after Stopping Work. After stopping its Work in accordance with Paragraph 5.3.3.1 above, the Contractor may, upon thirty days written notice to the Owner and the Design Professional, terminate this Contract and recover from the Owner payment for all Work executed and any proven loss sustained or incurred upon any plant or any materials, equipment, tools, construction equipment and machinery, and cancellation charges on existing obligations of the Contractor, if the grounds for stopping the Work are not removed.

**5.3.4 Limitation on Payments.** For terminations pursuant to Article 5.3.2 and 5.3.3, the Contract Sum shall be deemed earned only to the extent of an amount that bears to the total Contract Sum the same ratio that the Work in place at the time of termination bears to the total Work, as reasonably determined by the Design Professional, and approved by the Owner.

**5.3.5 Termination by Owner for Abandonment by Contractor.** Both the Contractor and the Surety agree that, after fourteen calendar days' written notice to the Contractor, the Owner may terminate the Contractor if the Contractor abandons the Project. If such termination occurs, the Owner shall credit the Contractor for Work satisfactorily completed, less any costs and liquidated damages the Owner suffers in correcting the Work, re-contracting and starting-up a replacement contractor, and completing the Project, including all warranties.

**5.3.6 Notices of Termination.** Notwithstanding any other provision of this Contract, no party may terminate this Contract, regardless of reason, unless the terminating party shall first issue a written Notice of Termination or of Default to the terminated or defaulted party by Statutory Mail or Certified Mail, Return Receipt Requested.

## SECTION 6 - PROJECT COMPLETION

### PART 1 MATERIAL COMPLETION

#### 6.1.1 Material Completion

6.1.1.1 Material Completion Defined. Material Completion is when the Work or designated portion thereof is complete in accordance with the Contract Documents so that the Owner and its Using Agency can occupy and utilize the Work for its intended use. Material Completion shall include issuance of any required Health Department inspections and any necessary certificates to operate, certificate of occupancy, as well as complete operation of all applicable building systems including, but not limited to, mechanical, electrical, plumbing, fire protection, fire alarm, security, elevators, life safety, and accessibility. Material Completion occurs when the Work is complete, except for Minor Items or Permitted Incomplete Work or Warranty Complaint Items (see Article 6.6.3), and a Certificate of Material Completion is obtained.

6.1.1.1.1 Material Completion and Occupancy Date. The date designated in the Contract for Material Completion to be achieved.

6.1.1.1.2 Minor Item Defined. A Minor Item is a portion or element of the Work—

- (a) That can be totally complete within thirty days; and
- (b) That can be completed while the Using Agency occupies the Work without impeding or interfering with either the Using Agency's use and occupation of the Work or the Contractor's ability to complete the Minor Item; and

(c) That will not interfere with the complete use and enjoyment of the project by the Using Agency.

**6.1.1.1.3 Permitted Incomplete Work Defined.** Permitted Incomplete Work is work that is incomplete through no fault of the Contractor, as determined by the Owner, including, but not limited to, seasonal test and balance, seasonal landscaping, scheduled elevator inspection or maintenance, incomplete work due to failure of Separate Contractors to complete work, and the like.

**6.1.1.2 When Material Completion Required.** Material Completion shall be achieved within the Contract Time and by the Material Completion and Occupancy Date, as amended. Failure by the Contractor to achieve Material Completion by not later than the Material Completion and Occupancy Date, as amended, shall be sufficient cause for the assessment of Liquidated Damages.

**6.1.2 Effect of Achieving Material Completion.** Upon the date when Material Completion is actually achieved, the following matters are conclusively determined:

6.1.2.1 Occupancy of the Work. The Using Agency may immediately occupy the Work without restriction.

6.1.2.2 Warranty Periods. All warranties begin to run from the date Material Completion is achieved.

6.1.2.3 Utilities. All utilities become the responsibility of the Using Agency.

6.1.2.4 Insurance. The Using Agency is responsible for all insurance for the Project.

6.1.2.5 Liquidated Damages. The Liquidated Damages daily rate is reduced to zero.

6.1.2.6 Payment for Material Completion. The Contractor may request payment of the remaining contract balance, including retainage, less the amounts credited the Owner or incurred as Liquidated Damages, and less the amounts withheld for the punch list by reason of Minor Items or Permitted Incomplete Work. See Paragraph 6.5.3.2.

**6.1.3 Effect of Failure to Achieve Material Completion.** Should Material Completion not be achieved by the Material Completion and Occupancy Date, as amended, the following matters are conclusively determined:

6.1.3.1 Breach of Contract. As time is of the essence in the completion of the Work, the Contractor is in breach of the Contract and is subject to default.

6.1.3.2 Liquidated Damages. Liquidated Damages at the specified daily rate in the Contract begin to accrue and are payable on the day immediately following the Material Completion and Occupancy Date.

## PART 2 FINAL COMPLETION

### 6.2.1 Final Completion

6.2.1.1 Final Completion. Final Completion shall be evidenced by the Design Professional's Certificate of Final Completion. Final Completion should include completion of Permitted Incomplete Work, as defined in Section 6, Part 1.

6.2.1.2 When Final Completion Required. Minor Items shall be completed as expeditiously as possible, but not later than thirty days after Material Completion of the Work. Permitted Incomplete Work shall be completed as expeditiously as possible, but not later than a date established by the Design Professional. The Design Professional's Certificate of Final Completion shall not be issued until all Minor Items and Permitted Incomplete Work are completed.

6.2.1.3 Deductions for Uncorrected Work. If the Design Professional and Owner deem it inexpedient to correct work not done in accordance with Contract Documents, a deduction from the Contract Sum may be made; but there is no duty on the part of the Owner to accept any work not done in accordance with the Contract Documents.

**6.2.2 Effect of Achieving Final Completion.** Upon the date when Final Completion is achieved and the Design Professional's Certificate of Final Completion is issued, the following matters are conclusively determined:

6.2.2.1 Project Completion. The Project and the Work are complete.

6.2.2.2 Payment for Final Completion. All amounts withheld from Payment for Material Completion and not previously paid to the Contractor or credited to the Owner, as set forth in Section 6, Part 4, are payable upon receipt of a final pay request from the Contractor.

**6.2.3 Effect of Failure to Achieve Final Completion.** Should Final Completion not be achieved within the time specified, as amended, the Owner may issue to the Contractor a fourteen-day notice as a final warning to complete the Work. If Final Completion is not achieved by the end of the fourteenth day from the date of the Notice, the following matters are conclusively determined, subject to any request for extension of time as set forth in paragraph 6.2.3.3 below:

6.2.3.1 Breach of Contract. As time is of the essence in the completion of the Work, the Contractor is in breach of the Contract and is subject to default.

6.2.3.2 Ineligibility to Bid Upon State Contracts. The Contractor is ineligible to bid or propose on any contract of the Owner, the Georgia State Financing and Investment Commission, the Board of Regents of the University System of Georgia or any unit of the University System of Georgia, or the Georgia Department of Administrative Services. In the event a bid has been submitted but the bid award has not been made, the Contractor's ineligibility requires that its bid be rejected.

6.2.3.2.1 Automatic Restoration of Eligibility to Bid. The Contractor's eligibility to bid upon state contracts shall be restored automatically as of the date of achievement of Final Completion as evidenced by the Certificate of Final Completion.

6.2.3.2.2 Application to Reinstate Eligibility to Bid. If the Contractor never achieves Final Completion, the Contractor's eligibility to bid or propose on state contracts may be reinstated upon the following:

- (a) Not earlier than eighteen months after the date of failure to achieve Final Completion, a written application requesting reinstatement of eligibility to one of the following: the Director, Construction Division, GSFIC; the Vice Chancellor for Real Estate & Facilities, Board of Regents; or the Commissioner, Department of Administrative Services; and
- (b) The showing of good and just cause to believe that the actual achievement of Final Completion was impossible, or the showing of other good and just cause that the Contractor's eligibility should be reinstated.
- (c) The Contractor may request a personal presentation in the application.

6.2.3.3 Extension of Time for Final Completion. The Contractor may file a request for an additional extension of time in the manner prescribed in Section 3, Part 3, and the effects of Failure to Achieve Final Completion shall be suspended until the Design Professional's decision. Should the Design Professional grant the application for extension of time generally, the time for achieving Final Completion shall be adjusted accordingly. Should the Design Professional grant the application for extension of time for a specific item of Work, that item of Work shall be deemed Permitted Incomplete Work with a specific individual final completion date.

## PART 3 INSPECTIONS FOR COMPLETION OF THE WORK

**6.3.1 General Responsibility of the Contractor for Inspection.** The Contractor acknowledges and agrees that it has an indivisible, non-delegable, and nontransferable contractual obligation to the Owner to make its own inspections of the Work at all stages of construction; and it shall supervise and superintend performance of the Contract in such manner as to enable it to confirm and corroborate at all times that all work has been executed strictly in accordance with the methods and materials designated in the Contract Documents. The Contractor's inspections are also for the purpose of permitting the Contractor to accurately represent that (a) its certifications on Applications for Payment are true and correct and (b) its notices of readiness for inspections are true and correct. Accordingly, the Contractor acknowledges and agrees that it may not defend or excuse any deviation from the Contract Documents on the ground (a) that another person or party failed to bring the deviation to its attention, or (b) that any Subcontractor is at fault.

### 6.3.2 Notice of Readiness for Inspection for Material Completion

6.3.2.1 Preparation of Initial Punchlist. Prior to the Material Completion and Occupancy Date, as amended, the Contractor shall correct all non-compliant or incomplete work. The Contractor shall then prepare an initial punch list itemizing to the best of the Contractor's knowledge all Minor Items and Permitted Incomplete Work (as defined in Section 6, Part 1) and provide a copy of the initial punch list to the Design Professional and Owner. The

Contractor is encouraged to consult with the Design Professional prior to finalizing the initial punch list, in particular in arriving at consensus for Minor Items and Permitted Incomplete Work.

**6.3.2.2 Contractor's Notice of Readiness for Inspection for Material Completion.** After or simultaneously with the provision of the initial punch list, the Contractor shall give the Design Professional and Owner written Notice of Readiness for Inspection for Material Completion in the following words:

*The work on the Contract for the [show name of Project as it appears in the Contract] having been materially completed, I request that the Design Professional perform an Inspection for Material Completion promptly in accordance with Section 6 of the General Conditions. I have attached the initial punch list.*

**6.3.2.3 No Inspection without Notice.** No Inspection for Material Completion shall be made until such time as the Design Professional and Owner have received notice in the form indicated above. In the event the Contractor shall have issued the Contractor's Notice of Readiness for Inspection for Material Completion prematurely, the Contractor shall be liable for the damage resulting therefrom, including but not limited to the salaries, professional fees, travel expenses, and living expenses of the persons or parties inconvenienced thereby.

**6.3.2.4 Additional Requirements for Inspection for Material Completion.** The Contractor shall not request any Inspection for Material Completion before the Contractor has provided to the Design Professional the following:

6.3.2.4.1 a copy of the initial test and balance report on the heating, ventilating, and air conditioning system;

6.3.2.4.2 a copy of the facility operation and maintenance instructions, and any other documents specified by the Design Professional in Division 1 of the Specifications; and

6.3.2.4.3 A certification from the Contractor that all building systems specified in Paragraph 6.1.1.1 above are operational. The Contractor expressly agrees that obtaining the manufacturer's warranties are solely the responsibility of the Contractor. In fulfilling this responsibility, the Contractor shall obtain the manufacturer's certificates in the format specified in Section 7 below and shall coordinate the initial start-up and testing of building systems. In all cases where the equipment of two or more manufacturers ties in and functions together, the Contractor shall require the manufacturers' field representatives to perform simultaneously the initial start-up, the testing, and the placing of their equipment into operation. "Start-up" is defined as putting the equipment into action. "Testing" is defined as performing such testing as is stipulated in the Contract Documents to be performed. "Placing into operation" is defined as operating the equipment for a sufficient period of time to determine that it is performing properly.

**6.3.3 Conducting the Inspection for Material Completion.** The Design Professional shall conduct the Inspection for Material Completion within seven days of receipt of the notice specified in Paragraph 6.3.3.2. The Design Professional shall confirm the initial punch list, shall add or delete Minor Items or Permitted Incomplete Work as appropriate, shall assign values to each item on the punch list, and shall assign completion dates for the items of Permitted Incomplete Work. At the completion of the Inspection for Material Completion, the resulting punch list shall be finalized by the Design Professional and provided to the Contractor within five days and shall become the final punch list. Upon determination of conformity with the definition of Material Completion as specified in Section 6.1.1.1 above, the Design Professional shall issue a Certificate of Material Completion.

**6.3.4 Notification of Using Agency of Site Visits by the Contractor or Subcontractors.** Following the issuance of a Certificate of Material Completion, the Contractor or its Subcontractors shall not visit the Site without first giving notice to the Using Agency and the Owner.

**6.3.5 Contractor's Notice of Readiness for Interim Inspection for Punchlist Completion.** Not more than thirty days after Material Completion, and upon completion of the Final Punchlist (including all Minor Items and such Permitted Incomplete Items as are due to be completed), the Contractor shall give the Design Professional and Owner written notice requesting Inspection for Final Completion in the following words:

*The work on the Contract for the [show name of Project as it appears in the Contract] having been 100% completed, except for Permitted Incomplete Work not yet due to be completed, I request that the Design Professional perform an Inspection for Final Completion promptly in accordance with Section 6 of the General Conditions.*

No inspection for Interim Inspection for Punchlist Completion shall be made until the Design Professional and the Owner have received notice in the form indicated above. In the event the Contractor shall have issued the Contractor's Notice of Readiness for Interim Inspection for Punchlist Completion prematurely, the Contractor shall be liable for the damages resulting therefrom, including but not limited to the salaries, professional fees, travel expenses, and living expenses of the persons or parties inconvenienced thereby.

**6.3.6 Conducting the Interim Inspection for Punchlist Completion.** The Design Professional will conduct the Inspection for Final Completion. The Design Professional will confirm the final punch list has been completed including all Minor Items. Upon completion of the inspection, the Design Professional will issue a Report of Interim Inspection, noting any Permitted Incomplete Work that remains to be accomplished and the date by which it is to be completed. In the event all Permitted Incomplete Work has been completed at the time of this Interim Inspection, and the Design Professional so certifies, then this inspection shall be deemed an Inspection for Final Completion. In the event any Minor Item is determined to be incomplete, the Owner may give the fourteen-day notice of failure to complete the Work, as set forth in Article 6.2.3.

**6.3.7 Conducting the Inspection for Final Completion.** When all Permitted Incomplete Work has been completed or scheduled for completion, the Owner shall call for and the Design Professional shall schedule the Final Inspection with the Owner and Contractor. The Design Professional shall conduct the Inspection for Final Completion and shall confirm that all Permitted Incomplete Work has been completed. Then the Design Professional shall issue the Certificate of Final Completion and Final Payment and any remaining funds may, upon an Application for Payment, be paid to the Contractor. Any Final Documents not yet submitted must be submitted with the Application for Final Payment. In the event any item of Permitted Incomplete Work is determined to be incomplete and the date for its completion has passed, the Owner may give the fourteen-day notice of failure to complete the Work, as set forth in Article 6.2.3.

## PART 4 FINAL DOCUMENTS

### 6.4.1 Final Documents

6.4.1.1 Final Documents Defined. Final Documents consist of all documents set forth in Division 1 of the specifications, as well as all warranties and guarantees required by the Contract Documents.

6.4.1.2 Minimum Specific Final Documents Required. Prior to submission of the Application for Payment for Material Completion, all Final Documents, including but not limited to the following, must be submitted to the Owner and Using Agency:

#### 6.4.1.2.1 Affidavits.

- (a) A Non-Influence Affidavit in the exact form as shown in Section 7, Forms.
- (b) A Statutory Affidavit in the exact form as shown in Section 7, Forms. Any exceptions to the Statutory Affidavit are subject to the approval of the Owner.

#### 6.4.1.2.2 Bonds.

- (a) A Five-Year Bond for Roofs and Walls as shown in Section 7, Forms, written by a surety authorized to do business in the State of Georgia and in the penal sum of the actual cost of the exterior walls, wall cladding, wall components, wall insulation, roof insulation, roof deck and roof but not less than the amount shown as in the approved initial breakdown for these roof systems and wall systems.
- (b) Any Bonds to Discharge Claim issued to Subcontractors and Suppliers as shown in Section 7, Forms.

6.4.1.2.3 Marked-up Construction Documents. The Contractor shall provide a complete set of Marked-up Contract Documents to the Design Professional, which set shall reflect all changes caused by RFIs, field changes, Change Orders, or observed changes by the Contractor or subcontractor(s) for the purpose of the Design Professional's issuance of Record Documents to the Owner.

6.4.1.2.4 Operation and Maintenance Data and Instructions and Training. The Contractor shall furnish proper written instructions to the Owner and Using Agency on operation and maintenance of all mechanical and electrical equipment. The Contractor shall provide training to the Using Agency in the operation and maintenance of all mechanical and electrical systems in the presence of the Design Professional and Owner and shall give notice in writing to the Design Professional, Owner and Using Agency at least fifteen days prior to the date it is proposed for the training. For all items of mechanical or

electrical equipment or apparatus installed that require operation or maintenance after occupancy, the Contractor shall furnish and deliver to the Owner and Using Agency complete brochures and data as prepared and published by the manufacturers covering details of operation and maintenance.

**6.4.1.2.5 Certificates of Manufacturers for Major Components.** Certificates of Manufacturers shall be provided for elevators, moving walks, dumbwaiters, escalators, lifts, major components of HVAC and plumbing systems, e.g., cooling towers, compressors, condensers, absorption units, chiller units, fan coil units, air handling units, boilers, base mounted pumps, temperature controls, chemical feed systems; sewage pumps and water treatment systems, and incinerator systems; and major components of electrical systems. Start-up, testing, and placing into operation shall be performed by the field representative(s) of the manufacturer(s), and certificate(s) of the manufacturer(s) shall be filed with the Owner on the letterhead(s) of the manufacturer(s) in which the manufacturer(s) certifies or certify that "the equipment has been installed in strict compliance with the recommendations of the manufacturer(s) and is operating properly," in the format shown in Section 7, Forms. The manufacturer shall list in the certificate the item or items furnished to the job and the date, name, or other positive means of identifying any supplementary documents containing the recommendations of the manufacturer, with a copy of each of the supplementary documents attached to the certificate.

**6.4.1.2.6 Final Certification of Costs.** For proper capital asset reporting of the Project, the Contractor shall submit its Final Certification of Costs in the format set forth in Section 7, Forms.

**6.4.1.2.7 Keys.** Unless an alternative locking or keying system is specified, a minimum of two sets of keys, with tags indicating room number or room description or door each key is intended to fit attached to each key, shall be delivered to the Owner and Using Agency. Contractor shall prepare and furnish with the keys an itemized key schedule listing the room number or room description or door, serial number of key, and number of keys being delivered for each door or lock.

**6.4.2 Presentation of Final Documents.** At the time of the Inspection for Material Completion, but in any event prior to the application for Final Payment, the Contractor will provide the Owner and Using Agency with a three-ring binder containing all of the Final Documents, warranties, and guarantees required by the Contract Documents. Included in the binder shall be the documents indicating the brand names actually used in the installation of the work.

**6.4.3 Keys.** Keys with tags indicating number and/or description of door or room each key is intended to fit attached to each key shall be delivered to the Owner and Using Agency. The Contractor shall prepare and furnish with the keys an itemized key schedule in quintuplicate listing the door or room number and/or description, serial number of key and number of keys being delivered for each door or lock.

## **PART 5 PAYMENT FOR MATERIAL COMPLETION AND FINAL PAYMENT**

**6.5.1 Payment for Material Completion.** Payment for Material Completion shall be due 10 days after receipt by the Owner of the application for payment upon achievement and certification of Material Completion, provided that Final Documents shall have been submitted. Payment shall be made by a check payable jointly to the Contractor and surety and shall be mailed to the surety.

### **6.5.2 Application for Payment for Material Completion**

**6.5.2.1 Certification of Contractor.** The Contractor shall certify, over his own signature, that the Work provided for by the Contract Documents has been completed under the terms and conditions thereof, and that the entire balance of the contract, including retainage, is due and payable, except for those amounts determined by the Design Professional to be withheld due to credits due to the Owner and Minor Items or Permitted Incomplete Work pursuant to Article 6.6.3 below.

#### **6.5.2.2 Supporting Documentation.**

**6.5.2.2.1 Financial Data.** The Contractor shall submit evidence satisfactory to the Design Professional that all payrolls, material bills, and other indebtedness connected with the work have been paid.

6.5.2.2 Affidavits and Bonds. The Contractor shall attach copies of the affidavits and bonds set forth in subparagraphs 6.4.2.2.1 and 2 above, execute the payment certification and forward it directly to the Design Professional.

#### **6.5.3 Release of Contractor's Retainage.**

6.5.3.1 Establishment of List. At the completion of the Inspection for Material Completion, the Design Professional and Contractor, with the consent of the Owner, shall develop the Final Punchlist. The Design Professional will assign a value for each the Minor Items and Permitted Incomplete Work.

6.5.3.2 Establishment of Amount of to be Withheld for Punchlist Items. In general, the amount to be withheld from the Payment for Material Completion and to be paid upon Final Completion shall be equal to 200% of the Design Professional's value of completing the Work for each Minor Item or Permitted Incomplete Work. The following additional amounts to be withheld shall be applied where applicable.

6.5.3.2.1 Mechanical and HVAC Systems. Until such time as the Design Professional shall have certified that the heating system has been balanced under seasonable weather conditions, the amount withheld shall in no event be less than \$1,000.00.

6.5.3.2.2 Certificates. For each certificate required for major components a sum of \$500.00 shall be withheld until such certificate shall have been filed with the Owner and Institution.

**6.5.4 Effect of Payment for Material Completion and Release of Claims.** Owner shall process the Payment for Material Completion as expeditiously as possible in accordance with the certification of the Design Professional, but interest shall not accrue until thirty (30) days have elapsed from receipt, unless error is found in the application or supporting documents. Acceptance of Payment for Material Completion by the Contractor shall operate as settlement, waiver, release, discharge and payment in full of all claims against Owner of any nature arising out of the Project except for the work associated with the Minor Items and the Permitted Incomplete Work.

**6.5.5 Final Payment.** Final Payment shall be due 10 days after receipt by the Owner of the application for payment upon achievement and certification of Final Completion, provided that Final Documents shall have been submitted. Payment shall be made by a check payable jointly to the Contractor and surety and shall be mailed to the surety. Owner shall process the Final Payment expeditiously as possible in accordance with the certification of the Design Professional, but interest shall not accrue until thirty (30) days have elapsed from receipt, unless error is found in the application or supporting documents.

6.5.5.1 Certification of Contractor. The Contractor shall certify, over his own signature, that the Work provided for by the Contract Documents has been completed under the terms and conditions thereof, and that the entire balance of the contract is due and payable.

6.5.5.2 Supporting Documentation.

6.5.5.2.1 Financial Data. The Contractor shall submit evidence satisfactory to the Design Professional that all payrolls, material bills, and other indebtedness connected with the work have been paid.

6.5.5.2.2 Affidavits and Bonds. The Contractor shall attach copies of the affidavits and bonds set forth in subparagraphs 6.4.2.2.1 and 2 above, execute the payment certification, and forward it directly to the Design Professional.

**6.5.6 Effect of Final Payment and Release of Claims.** Acceptance of Final Payment for Material Completion by the Contractor shall operate as settlement, waiver, release, discharge and payment in full of all claims against Owner of any nature arising out of the Project.

#### **PART 6 CORRECTION OF WORK AFTER FINAL PAYMENT**

**6.6.1 Non-Compliant or Defective Work.** Neither the Design Professional's Certificate of Final Completion, nor any decision of the Design Professional, nor payment, nor any provision in the Contract shall relieve the Contractor of responsibility for faulty materials, faulty workmanship, or omission of contract work, and it shall remedy any defects or supply any omissions resulting therefrom and pay for any damage to other work resulting therefrom.

6.6.1.2 Notice of Non-Compliant or Defective Work. The Owner shall give notice of observed defects or omissions with reasonable promptness. Attached to or included within the notice shall be a Notice of Non-Compliant Work.

6.6.1.3 Correction of the Work. Within the space of time designated in Notices of Non-Compliant Work and without expense to the Owner, the Contractor shall correct, remedy, replace, re-execute, supply omitted work, or remove from the premises all work designated as non-compliant by the Design Professional. The Contractor shall give prompt notice in writing to the Design Professional, with copy to the Owner, upon completion of the supplying of any omitted work or the correction of any work designated as non-compliant by the Design Professional. In the absence of said notice, it shall be and is presumed under this Contract that there has been no correction of the non-compliant work or supplying of omitted work. If the Contractor does not remove, make good the deficiency, correct, or remedy faulty work, or supply any omitted work within the space of time designated in Notices of Non-Compliant Work, then the Owner, after ten days' notice in writing to the Contractor, may remove the work, correct the work, remedy the work or supply omitted work at the expense of the Contractor. In case of emergency involving health, safety of property, or safety of life the Owner may proceed at once with correction of the Work without waiving any rights of the Owner. Correction of defective work executed under the plans and specifications or supplying of omitted work whether or not covered by warranty of a subcontractor or supplier, remains the primary, direct responsibility of the Contractor. The foregoing obligation of the Contractor shall remain in effect until the expiration of the statute of limitations covering the Work.

6.6.2 **Warranty and Guaranty.** The Contractor warrants and guarantees that all work executed under the Contract Documents shall be free from defects of materials or workmanship for a period of one year from the date of Material Completion. Whenever a manufacturer's warranty or the Contract Documents call for written guarantees or warranties in excess of one year, the Contractor shall furnish them in such form as to permit direct enforcement by the Owner against any Subcontractor, Supplier, or manufacturer whose guaranty or warranty is called for. The Contractor further agrees to all of the following:

6.6.2.1 Jointly and Severally Liable. The Contractor is jointly and severally liable with such Subcontractors, Trade Contractors, Suppliers, or manufacturers;

6.6.2.2 Ratification of Warranties by the Contractor. The warranties and guarantees of the Subcontractors, Trade Contractors, Suppliers, and manufacturers are provided by the Contractor for purposes of performance under this article, and the Contractor, ratifies them by its warranty and guaranty;

6.6.2.3 Service of notice. Service of notice on the Contractor that there has been breach of any warranty or guaranty will be sufficient to invoke the terms of this article;

6.6.2.4 Bind Subcontractors, etc. The Contractor shall bind its Subcontractors, Trade Contractors, Suppliers, and manufacturers to the terms of this article; and

6.6.2.5 Warranties no Limitation. The calling for or the furnishing of written warranties shall in no way limit the contractual obligation of the Contractor to correct the work as set forth in this Part. The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

### 6.6.3 **Warranty Complaint Item Procedure**

6.6.3.1 Notice of Warranty/Guaranty Complaint Items. The Owner and Using Agency may provide notice of warranty work by a warranty complaint letter, sent by statutory mail or facsimile to the Contractor. The letter should outline the complaint item in non-technical language. In emergency situations, the initial notification may be oral to a person or office designated by the Contractor. The Contractor shall respond promptly to all such notices.

6.6.3.2 Duty to Correct. During the one-year period of the warranty and guaranty, any defects of material or workmanship that become apparent shall be the responsibility of the Contractor until and unless the Contractor can show abuse or design defect. The Contractor shall immediately correct all defects that become known during the one-year period at no cost to the Owner unless notice is given to the Design Professional, Owner and Using Agency, prior to correcting the defect that the cause of the defect is the result of abuse or design deficiency.

6.6.3.2.1 Initial Response. When the Using Agency, the Owner, or the Design Professional notifies the Contractor of a defect, the Contractor will visit the site to review the complaint within five days and shall promptly correct the



Work. If the Contractor fails to respond within this time limit, the Owner may correct the defect or malfunction and charge the Contractor for the Work. The Contractor shall give notice in writing to the Owner when corrections have been completed.

6.6.3.2.2 Design Defect or User Abuse. If the Contractor believes that a design defect or user abuse has caused the malfunction or defect, he will notify the Design Professional and the Design Professional will issue a formal decision in his capacity as Design Professional and initial interpreter of the conditions of the contract. If the Contractor disagrees with the Design Professional's response, he shall protest to the Owner in accordance with Section Five Part two. If it is determined the complaint is not the responsibility of the Contractor, the Contractor shall be promptly paid for the cost of the corrective work.

6.6.3.2.3 Emergency Situations. If the condition is an emergency, this will be communicated to the Contractor with the request that corrections are to be accomplished immediately. The Contractor shall respond to the notice in emergency situations within twenty-four hours. If the Contractor fails to respond within this time limit, the Owner may correct the defect and charge the Contractor for the Work. If it is determined the complaint is not the responsibility of the Contractor, the Contractor shall be promptly paid for the cost of the corrective work. The Contractor shall give notice in writing to the Owner when corrections have been completed